

Patrick Bernier & Olive Martin • Aldo Milohnić • Judith Ickowicz • Jonas Staal • Tea Tupajić • Jakob
Braeuer • Joanna Warsza • Juli Reinartz • Omer Krieger • Vincent W. J. van Gerven Oei • Agency

Frakcija

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Venerina muholovka, *Dionaea muscipula*, pripada porodici biljaka mesožderki. Sliči prekrasnome cvijetu i veoma je atraktivna za kukce, budući da izlučuje nektar preko ruba svakog pojedinog lista. Lovi svoj plijen – uglavnom kukce i paukove – pomoću zamke koju oblikuje vrhom lista, a koju aktiviraju sitne dlačice na njegovoj unutarnoj strani. Kada kukac ili pauk dotaknu neku od tih dlačica dok pužu preko lista, zamka se naglo zatvori. Probava traje desetak dana, nakon čega od plijena preostane samo ljuštura. Zamka se tada otvara i spremna je za ponovnu uporabu.

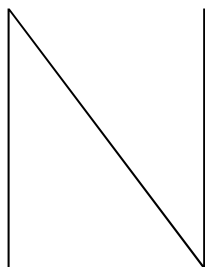
The Venus flytrap, *Dionaea muscipula*, is a carnivorous plant. Resembling a beautiful flower, it makes itself very attractive to insects, oozing nectar across the brim of each leaf. It catches its prey – chiefly insects and arachnids – with a trapping structure formed by the terminal portion of each of the plant's leaves and is triggered by tiny hairs on their inner surfaces. When an insect or spider crawling along the leaves contacts a hair, the trap closes in rapid movement. Digestion takes about ten days, after which the prey is reduced to a husk. The trap then reopens, and is ready for reuse.

Imunitet umjetnosti / The Immunity of Art

Frakcija 66/67







akon ubojstva izraelskog režisera Juliana Mer-Khamisa i nakon uhićenja Ai Wei Weija, članova grupe Voina, te nakon

spektakularnog uhićenja i suđenja Pussy Riot, čini se iluzornim govoriti u imunitetu umjetnosti.

Bretonova nadrealistička gesta uzimanja revolvera i nasumičnog pucanja u gomilu, u svakom društvu bila bi tretirana kao zločin, bez obzira na umjetnički kontekst u kojem se dogodila.

Dakle, nije moguće napraviti bilo što, proglasiti to umjetničkim djelom i izbjeći sankcije. Umjesto toga, pitanje koje ovo izdanje postavlja glasi – Što je to što je moguće učiniti samo zato jer je umjetničko djelo? Na koji način fiktionalna sfera u kojoj umjetnost operira može poslužiti kao azil?

Temeljna valuta post-disciplinarnog društva je sloboda, a umjetnost je njen utjelovljeni ideal.

Ako je upravo zato ta ista umjetnost često kritizirana kao autonomna sfera u koju su kritičke operacije izmještene i time paralizirane, ako sve što se radi u umjetnosti ostaje uvijek i jedino umjetnost, nije li to njeno glavno oružje, a ne njena slabost?

Izdanje otvara ova pitanja krenuvši od imuniteta umjetnosti u pravnom smislu i istražuje slijepe točke koje umjetnost može stvoriti u susretu s pravom kao primarnim regulatornim aparatom zapadnog društva.

U političko-pravnom jeziku imunitet označava privremeno ili definitivno izuzeće subjekta od konkretnih obaveza ili odgovornosti koje bi ga u normalnim okolnostima obvezivale. Imunitet umjetnosti odnosi se, dakle, na izuzeće umjetničkog

djela ili polja umjetnosti od odgovornosti kojima su podvrgnute druge sfere javnog i privatnog života.

Osim toga, umjetnosti se nalazi u jedinstvenoj poziciji u odnosu na pravo. Kao što navode Aldo Milohnić i Jakob Braeuer, da bi pravo kao sustav operirao, nužna je definicija. Ono što se ne može precizno definirati ili ne postoji ili u svojoj nepredvidljivosti predstavlja opasnost.

Od svih sfera ljudskog djelovanja, umjetnost je sfera s kojom pravo ima najviše poteškoća, upravo zato jer se granice onoga što je umjetnost ne mogu precizno definirati te se neprestano pomiču. Kada je Duchamp rekao "Ovo je fontana.", ono što je zapravo rekao bilo je "Ovo je umjetnost". Od toga trenutka počinje apsolutni monopol umjetnosti nad vlastitom definicijom, otvara se polje njenog subverzivnog potencijala.

Predstava *X&Y protiv Francuske... Projekt za stvaranje pravnog presedana* počinje pozivom odvjetnice Sylvije Preuss-Lausinotte na kreativnu moć prava da napravi iznimku i stvori novi koncept, presedan. Projekt započet 2007. godine u Francuskoj u kontekstu prosvjeda u predgrađima Pariza, postroženja imigrantskih zakona, kao i redefiniranja zakona o intelektualnom vlasništvu, stvara jedinstveni pravni argument prema kojemu ilegalni emigranti postaju čuvari i autori nematerijalnog umjetničkog djela. Zamišljen kao svojevrsni *open sourcing* francuskog kulturnog identiteta, ovaj argument destabilizira binarnu opoziciju građanin/imigrant bez prava, te uvodi potpuno novu kategoriju sudionika u političkom i kulturnom životu države.

Konceptualna umjetnost 1960-ih godina je pred pravo stavila jedan od najmanje predvidljivih izazova. Lišivši umjetničko djelo materijalnog postojanja,

navela je pravo da iz temelja preformulira ne samo definiciju umjetnosti i njene forme, već i općeniti pojam "stvari" nužan za koncept zakona o bilo kakvom prisvajanju. Tekst Judith Ickowicz s pravnog gledišta analizira djela tradicionalne konceptualne umjetnosti 1960-ih godina, ali i suvremene umjetničke prakse bez materijalnog objekta, čija su krajnja ekstenzija efemeralne izvedbene umjetnosti.

New World Summit, projekt Jonasa Staala pokrenut je kako bi se organizacijama koje se nalaze izvan demokracije, konkretnije koje su uvrštene na međunarodni popis terorističkih organizacija, omogućilo okupljanje i stvaranje alternativnog parlamenta. Ovaj suplement demokraciji, kako ga autor naziva, postoji isključivo zbog umjetnosti i kroz kontekst u kojemu se ona održava.

Osim u striktno pravnom smislu, izdanje kreće u potragu za suvremenim Trojanskim konjem i istražuje upotrebu umjetnosti/umjetničkog u praksama političkog djelovanja. Pitanje koje se tu postavlja ne glasi: Kako možemo misliti strategije u umjetnosti, već kako misliti umjetnost kao strategiju?

Tekst Joanne Warsze donosi primjer gradonačelnika Bogote Antanasa Mockusa, koji je sredinom 1990-ih godina, u vrhuncu procvata uličnog kriminala i narko-prometa, u situaciji u kojoj su zakazali uobičajeni modeli političkog djelovanja i pravo kao regulatorni aparat, posegnuo za operacijama specifičnim za umjetnost. Mockus koristi performativne geste kao što su nošenje kostima Supermana, tuširanje na javnoj televiziji, služi se strategijama igre i happeninga kao političku strategiju za ostvarenje vrlo konkretnih ciljeva.

Juli Reinartz uvodi pojam stratagema. Za razliku od strategije koja se u teoriji rata definira kao dugoročni plan namijenjen ostvarivanju cilja, stratagem je fikcija, inscenirana situacija, smicalica namijenjena obmani neprijatelja, te je kao takav inherentno umjetničko sredstvo.

Posuđujući stratageme iz kineske *Knjige Južnog Qija*, biologije i povijesti i prevodeći ih u moguće umjetničke prakse, tekst predlaže mobilizaciju umjetničkih sredstava za svladavanje neprijatelja. Tko god on bio.

Vincent W. J. van Gerven Oei bavi se odnosom koji politika i filozofija dijele prema umjetnosti. Na primjeru Deleuzeove (zlo) upotrebe Gombrowicza, dijagnosticira suvišak koji umjetnost proizvodi, suočena s potrebom za asimilacijom i sistematizacijom. Ako se legalizacija u filozofskom i političko/pravnom smislu shvaća kao jamac unutarnje konceptualne stabilnosti, strategija otpora koju umjetnost odabire i predlaže jest neprestano pronalaženje novih modela negacije.

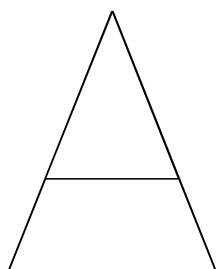
Postoji glasina da su glumci u Njemačkoj i Austriji sat vremena nakon što su izašli s predstave, bili oslobođeni odgovornosti za manja krivična djela, jer su još uvijek pod utjecajem uloge koju su u kazalištu igrali.

Na tom tragu Agency predstavlja slučaj *Predmet 001079* koji se bavi autorskim pravima *channelersa*. Channelersima se nazivaju umjetnici koji tvrde da nisu autori svojih tekstova/dijela, već da samo kanaliziraju misli nevidljivih entiteta. *Predmet 001079* dovodi do krajnosti pitanje autorstva i samim time odgovornosti za umjetničko djelo.

Tea Tupajić

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Agency



fter the murder of Israeli film director Juliano Mer-Khamis and the arrests of Ai Weiwei or the members of Voina group, and after the spectacular arrest and

sentence of Pussy Riot, it seems illusionary to even speak about the immunity of art.

Breton's surrealist gesture of taking a revolver and firing blindly into the crowd would be treated as a crime in any society, regardless of the artistic context in which it has taken place.

It is therefore almost impossible to do just anything, proclaim it a work of art, and get away with it. Instead, the question that arises here is: What *can* be done only because it is a work of art? How can the fictional sphere in which art operates function as an area of refuge?

The basic currency of the post-disciplinary society is freedom, and art is its embodied ideal.

If this is the reason that art is often criticized as an autonomous sphere where critical operations have been displaced and thus paralyzed, and if everything that is ever done in art is bound to remain merely art, isn't that its main weapon rather than its weakness?

This issue of *Frakcija* raises these questions by taking as its starting point the immunity of art in the legal sense of the word, and by exploring the blind spots that art can create in its encounter with law as the primary regulatory apparatus in Western society.

In the political-legal language, immunity denotes the temporary or permanent exemption of a subject from specific duties or responsibilities that would be binding in normal circumstances. The

immunity of art, therefore, refers to the exemption of an artwork or an artistic field from responsibilities to which other spheres of public and private life are subjected.

Moreover, art occupies a unique position in relation to law. As Aldo Milohnić and Jakob Braeuer have indicated, law needs definitions in order to operate as a system. What cannot be unambiguously defined either does not exist or presents a threat in its unpredictability.

Of all spheres of human activity, art is the one that presents most difficulties for law, which is precisely because its borderlines cannot be accurately defined and are constantly shifting. When Duchamp said "This is a fountain," what he actually said was: "This is art." From that moment, the absolute monopole of art over its own definition began, opening up the field of its subversive potentiality.

The performance *X&Y versus France... Project for creating a legal precedent* begins with the lawyer Sylvia Preuss-Lausinotte demanding from the creative power of law to make an exception and create a new concept, a precedent. The project was initiated in 2007 in France, in the wake of protests in Parisian suburbs, reinforcement of immigration laws, and redefinition of the law on intellectual property. It created a unique legal argument according to which illegal immigrants could become the guardians and authors of immaterial artworks. Conceived as a sort of open sourcing of French cultural identity, this argument destabilized the binary opposition of citizen/immigrant-with-no-rights, introducing a completely novel category of participants in the political and cultural life of the state.

The conceptual art of the 1960s faced law with an unforeseen challenge. Having deprived the artwork of its material

existence, it claimed the right to fundamentally reinvent not only the definition of art and its form, but also that of the general notion of “the thing”, necessary for the concept of any law on ownership. The essay of Judith Ickowicz takes the legal point of view to analyze both the works of traditional conceptual art of the 1960s and contemporary art practice with no material object, including the ephemeral performing arts as its extension.

New World Summit, a project by Jonas Staal, was launched in order to make it possible for those organizations that are outside democracy, or to put it more accurately, those that have been included in the international list of terrorist organizations, to meet and create an alternative parliament. This supplement to democracy, as the author has labelled it, exists exclusively for and through the artistic context in which it is taking place.

Besides this strictly legal sense, this issue of *Frakcija* has embarked on a search for the modern Trojan horse, exploring the use of art and the artistic in various forms of political activity. The question that has been raised here is: How can we think of art as a strategy, rather than strategies in art?

The essay of Joanna Warsza brings the example of Bogotá’s mayor Antanas Mockus, who in the mid-1990s, at the peak of street crime and drug traffic, in a situation in which the usual models of political action and law as the regulatory apparatus were failing, reached for operations that were specific for art. Mockus used performative gestures such as costume wearing, taking a shower on public television, and strategies of play and happening as his political strategies intended to achieve very specific goals.

Juli Reinartz introduces the notion of stratagem. Unlike strategies, which in the

theory of war are defined as long-term plans aimed at achieving particular goals, the stratagem is a fiction, a staged situation, and as such it is an inherently artistic instrument.

Borrowing its stratagems from the Chinese *Book of Southern Qi*, biology, and history, and translating them into various art practices, the text proposes the mobilization of artistic means in order to conquer the enemy. Whoever that may be.

Vincent Van Gerven Oei deals with the attitude that politics and philosophy share regarding art. Using the example of Deleuze’s (ab)use of Gombrowicz, he diagnoses the excess that art generates when facing the need of assimilation and systematization. If legalization in philosophical and political/legal terms is understood as a warrant of inner conceptual stability, then the strategy of resistance that art chooses and suggests consists in incessantly searching for new models of negation.

There is a rumour that some actors in Germany and Austria have been found not guilty for minor criminal offences that they committed up to an hour after leaving the theatre show, since they were presumably still under the impact of the role they had played.

In the wake of that, Agency presents the case of *Thing 001079*, which deals with the copyright of so-called channellers. This is a term for those artists who claim not to be the authors of their texts/artworks, but merely those who channel the thoughts of invisible entities. *Thing 001079* takes the issue of authorship to the extremes and thereby the responsibility for a work of art.

Tea Tupajić

Translated from Croatian by Marina Miladinov

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X&Y protiv Francuske...

Projekt za stvaranje pravnog presedana

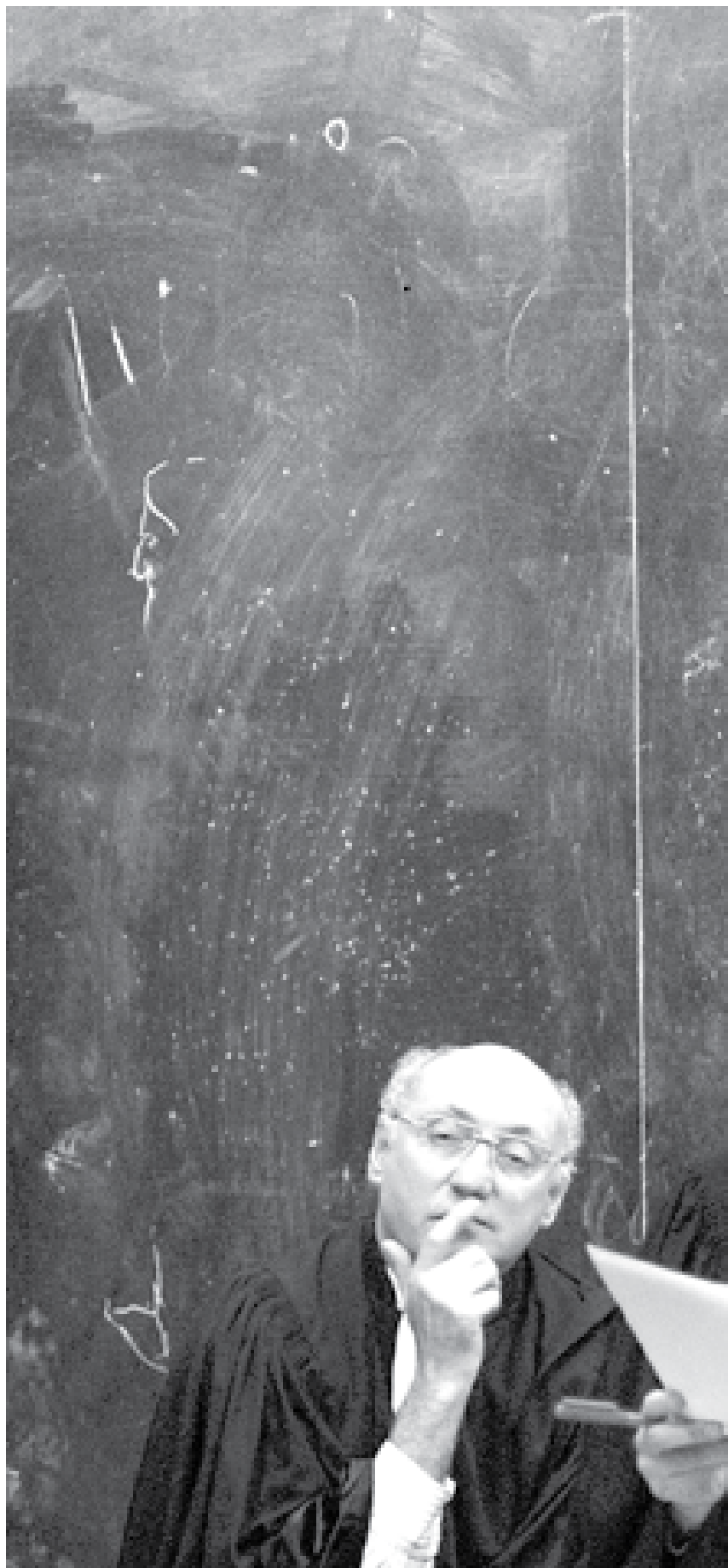
Patrick Bernier i Olive Martin

S engleskoga prevela Marina Miladinov

Projekt X&Y protiv Francuske... Projekt za stvaranje pravnog presedana započeli su 2007. godine francuski umjetnici Patrick Bernier i Olive Martin, u suradnji s odvjetnicima Sébastienom Canevetom, stručnjakom za intelektualno vlasništvo, i Sylvijom Preuss-Laussinotte, stručnjakinjom za migracijsko pravo.

Na osnovi *Priče za stvaranje pravnog presedana* zajedno su koncipirali fiktivni sudski proces kako bi razradili pravnu argumentaciju kao oruđe pomoću kojega će ilegalni imigranti, pretvoreni u koautore i čuvare nematerijalnog, *site-specific* umjetničkog djela, moći izbjeći deportaciju pozivajući se na zakone o intelektualnom vlasništvu i kulturnoj baštini.

Sam rad predstavljen je kao predstava u kojem Canevet i Preuss-Laussinotte, pozivajući se na kreativnu snagu zakona, iznose završne argumente na fiktivnom saslušanju za deportaciju. Pravni argumenti koji se iznose u predstavi imaju potpunu zakonsku valjanost i mogu se koristiti pred sudom.





Priča za stvaranje pravnog presedana

PATRICK BERNIER

Na Upravnom sudu zemlje N., ujutro 20. rujna, jedna je strankinja nereguliranog statusa, kojoj je prefekt uputio nalog za deportaciju, ustala kako bi se obratila sucu s posljednjim prizivom.

Časni suče, došla sam pred vaš Sud kako bih dovela u pitanje nalog za deportaciju koji mi je uručila prefektura N. Potvrdite li pravovaljanost tog naloga, bit ću deportirana u zemlju iz koje sam uspjela pobjeći samo po cijenu bolnih žrtava i uz znatan rizik. Ured za azil i imigraciju Vaše zemlje nije povjerovao u razloge koji su me natjerali da napustim svoju zemlju i odbacio je moju molbu za dodjelu azila. Danas bi povratak onamo značio povredu mog privatnog života i prijetnju samom mom opstanku, što se čini nedopustivim. Bez obzira na moje poštovanje prema Vama, nemam nade u to da ćete biti osjetljivi na moje argumente, budući da Vaša zemlja trenutno utvrđuje političke i ekonomske odnose sa zemljom odakle potječem: ondje sada sve štima, časni suče, sve štima! Međutim, prije nego što date zeleno svjetlo mojoj deportaciji, željela bih Vas upozoriti da neću sama napustiti Vaš teritorij, jer sa sobom nosim umjetničko djelo nastalo u suradnji s umjetnikom P., koji je građanin Vaše zemlje. Nemojte spuštati pogled kako biste odmjerili moj trbuh, jer nećete ništa otkriti: nisam trudna. Ne očekujem dijete čije bi mi rođenje dalo pravo da ostanem u ovoj zemlji. Moj odnos s umjetnikom P. sasvim je prijateljske i umjetničke naravi. On je povjerio mome sjećanju svoj dio tog umjetničkog djela; ja sam njegova čuvarica i tumač, koautorica u onoj mjeri u kojoj ga dotiče moje sjećanje. To umjetničko djelo je priča: priča o umjetničkom projektu i njegovu učinku. Molim Vas da je saslušate onakvu kakvu ću Vam je danas ispričati, jer sutra ću je pričati drugačije.

Prije nekog vremena jedan je izložbeni kustos međunarodnog ugleda pozvao P.-a da sudjeluje u kolektivnom kustoskom eksperimentu. Pozvao ga je da izabere deset djela različitih umjetnika koja će biti izložena zajedno s drugima u jednoj čuvenoj londonskoj galeriji. Nekoliko dana kasnije P. je pročitao u novinama da je neki 28-godišnji Iračanin poginuo na ulazu u Eurotunel, zdrobljen pod kotačima kamiona na koji se pokušao objesiti kako bi se dokopao Engleske. Taj fatalni pokušaj učinio mu se kao fotografski negativ kustosova prijedloga. Poziv na predstavljanje radova s druge strane Kanala kao rješenje za nemogućnosti nekih ljudi da pređu taj uski morski pojas. Kako bi se ubuduće na poziv da se pošalju radovi moglo umjesto toga poslati ljude? P. je nedugo prije toga počeo surađivati s jednim piscem, kojemu je povjerio svoje umjetničke eksperimente kako bi ih iznio u javnost, pri čemu ih je pisac modificirao u skladu sa svojim umijećem i vlastitim sjećanjem. Tako je nastala ideja o suradnjama između poznatih umjetnika i ljudi u tranzitu; o stvaranju umjetničkih djela koja neće poprimiti oblik nekog predmeta, pisanog teksta ili bilo koji drugi opipljivi oblik, nego će zadržati nematerijalni aspekt tako što će o njihovim čuvarima ovisiti način na koji će ih rekonstituirati koristeći se vlastitim sposobnostima kao što su pripovijedanje, sviranje nekog instrumenta,



ples, pjevanje ili podučavanje! Za predstavljanje tih radova u Londonu bilo bi potrebno da koautori i ekskluzivni tumači tih izvornih umjetničkih djela pređu Kanal. Radovi bi na taj način podarili svojim čuvarima status kurira.

P. je stupio u kontakt s umjetnicima, znanstvenicima, koreografima, filmašima i kompozitorima za čija se istraživanja i pristupe činilo da odgovaraju tom prijedlogu. Činilo mu se važnim da prevlada razinu pukog pokroviteljstva: trebala je to biti stvarna suradnja, koja će obogatiti sve sudionike. Umjetnici su odgovorili i tako su otpočele suradnje s "nedokumentiranim osobama" uz pomoć skupina za pomoć izbjeglicama. Jedan je koreograf pokazao niz kretnji koje je zamijetio u novijoj povijesti suvremenog plesa nekom mladom Kurdu, koji ih je zatim izveo i upotpunio novim pokretima. Kompozitor je stvorio glazbeno djelo za instrument koji je neki Afganistanac napravio tijekom putovanja. Konceptualni umjetnik prikazao je u nekoliko riječi skulpturu nekoj ženi iz Nigerije kako bi je ona kasnije oblikovala koristeći druge riječi, prožete nostalgijom.

Nosači umjetničkih djela pisali su francuskim i britanskim vlastima kako bi dobili pravo na ulaz u Veliku Britaniju i odazvali se na poziv da predstave radove kojima su bili koautori, čuvari i tumači. Nisu dobili nikakav odgovor. Zatim su umjetnici pisali s molbom da se dopusti prijelaz granice osobama koje nose njihove radove kako bi se ti radovi mogli predstaviti u Londonu. Prefekt je odgovorio da je s obzirom na neregulirani status dotičnih osoba nemoguće udovoljiti njihovoj molbi, upozoravajući ih da svaka pomoć pri ulasku ili boravku koja se pruži osobi s nereguliranim statusom predstavlja kazneno djelo. Kao pomoćni kustos izložbe, P. im je pisao kako bi zatražio dozvolu za ulaz u zemlju deset osoba koje su nosile radove koje je izabrao. Dobio je isti odgovor, uz upozorenje da su kazne za već navedeni prekršaj barem dvostruke ako ih počini organizirana skupina. Glavni kustos napisao im je da bi odbijanje molbe za tranzit deset dotičnih osoba eliminiralo važne radove koji su trebali biti predstavljeni na njegovoj izložbi. Britanske vlasti su mu odgovorile kako nije moguće udovoljiti njegovoj molbi zbog bilateralnih sporazuma između francuskog i britanskog Ministarstva unutarnjih poslova. Direktor galerije nije poslao nikakav dopis jer se bojavao reakcije svojih državnih sponzora.

Nijedan od kurira nije dobio dopuštenje da uđe u Veliku Britaniju. Na dan otvaranja izložbe u Londonu posjetitelji su zatekli deset kartica s naslovima odsutnih djela uz radove koje su odabrali drugi pomoćni kustosi. Naslovi radova bili su izloženi uz imena koautora, uz tekst koji je pojašnjavao kako su francuske i britanske vlasti odbile tranzit autorima-tumačima tih radova, i kako organizatori žale što ih ne mogu predstaviti. Na posjetitelje se apeliralo da pošalju vlastima pismo pritužbe. Mnogi su to i učinili, ali nitko od njih nije dobio odgovor. Na otvaranju su bili prisutni i neki od umjetnika koji su surađivali s kuririma. Na njih se vršio pritisak da sami predstave svoje radove, ali oni su to odbili, umjesto toga govoreći o svojim iskustvima. Priča se proširila. Organiziran je bojkot koji je ujedinio nezadovoljne umjetnike, ogorčene time što su vidjeli kako se na račun njihovih radova bogate oni koje bi radije osudili. Glazbenici koji se žele osloboditi velikih multinacionalnih tvrtki, pisci koji izbjegavaju objavljivanje svojih djela (jer je nakladništvo uglavnom u rukama trgovaca oružjem) i umjetnici zgroženi time što njihova djela završavaju na spekulacijskom tržištu redom su odlučili da više neće objavljivati, izlagati ili predstavljati svoj rad. Sjetili su se kako su muškarci i žene iz jednog književnog pokreta otpora povjerali svoja djela pamćenju kako bi omogućili da zabranjeni tekstovi nastave cirkulirati, recitirajući ih svakome tko ih je želio čuti. Spremni uzvratiti uslugu, sada kada se više nije radilo o knjigama koje kruže skrivene ispod kaputa, nego o ljudima skrivenim ispod kamiona, naši umjetnici bili su



spremni povjeriti svoje najnovije tvorevine pamćenju onih koji nemaju dokumente i nemaju prava, ljudima kojima se niječe i sama egzistencija. Zabranili su objavljivanje svojih umjetničkih djela u bilo kakvom opipljivom obliku (bile to knjige, filmovi ili diskovi) koji bi mogao omogućiti njihovu cirkulaciju bez čuvara. Radovi su nužno bili suradnički, budući da je čuvar prilagodio djelo svome pamćenju i obogatio ga vlastitom poviješću i znanjem. Čuvar je rekonstituirao djelo po vlastitom nahođenju, u više ili manje cjelovitom, fragmentiranom, hibridnom ili izvornom obliku.

Isprva je nezakonita situacija nosača umjetničkih djela prisilila učesnike da održavaju prezentacije tijekom tajnih sastanaka. Jednoga dana jedna je žena uhićena. Njezina situacija bile je neregulirana, budući da je bila "nedokumentirana osoba", ali ona je također bila čuvarica umjetničkog djela. Sud nije smatrao da to što ona sadrži djelić neopipljivog kulturnog nasljeđa predstavlja prepreku njezinoj deportaciji i potvrdio je nalog za deportaciju unatoč prosvjedima umjetnika-koautora, koji je ondje bio prisutan i pozivao se, ponešto nelogično, na neotuđivo pravo autorstva. Tijekom boravka žene u zatvoru prije deportacije niz entuzijasta zatražio je pravo na posjet kako bi saslušao rad. Zatvorska telefonska centrala bila je zagušena pozivima ljudi koji su tražili informacije o terminima posjeta, tako da je mjesto počelo zvučati poput kakve teatarske zgrade.

Broj suradnji se povećao. Umjetnici više nisu bili jedini koji su svoje radove povjeravali pamćenju "nedokumentiranih ljudi": znanstvenici su s njima dijelili svoja otkrića, velikani svoje memoare, a vrhunski kuhari svoje recepte. Sjećanje cijele zemlje postupno je otišlo u egzil, istom brzinom kojom su se provodile deportacije.

Njihova slava prelazila je granice unatoč odsutnosti umjetničkih djela i osoba. Umjetnici svih zemalja vršili su pritisak na svoje vlasti kako bi se omogućio ulazak u zemlju stranim nosačima umjetničkih djela. Odbijanje vlasti izazvalo je među lokalnim umjetnicima osjećaj da više nisu u toku s događajima, budući da su nove stvari do njih dolazile samo u komadićima, u izvješćima putnika koji su možda čuli to djelo u drugoj zemlji. Često bi priča potjecala iz druge ruke ili bi je prenosilo više osoba kroz više sjećanja. Priče su dobivale na fantastici, kombinirajući ukrase pod utjecajem raznih izložbi ili konferencija. Svijet umjetnosti počeo je napuštati zatvorene zemlje. Umjetničko vrenje prelazilo je granice. Tranzitni logori za strance pretvorili su se u umjetnička središta, a umjetničke ustanove u zatvorenim zemljama počele su odumirati. Stoga su savjetnici tih zemalja, kako bi spriječili da njihove zbirke uništi nezainteresiranost, a muzeje letargija, omekšali i počeli dopuštati iznimke u tranzitu osoba koje su nosile umjetnička djela. No još uvijek nedostaje sudac koji bi bio esteta i opozvao nalog za deportaciju upućen jednoj od njih.

Bili ste upozoreni, zahvaljujem i pozdravljam vas.

Presuda se razmatra.

P. S. Izložbu *I Am A Curator* koncipirao je Per Hüttner za Chisenhale Gallery u Londonu u studenome 2003. Galerija nije prihvatila projekt u obliku u kojem je ovdje opisan te je ostao u fazi planiranja.



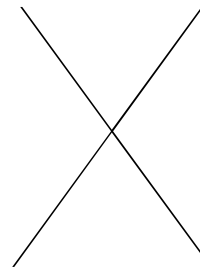


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X&Y versus France...

Project for creating a legal precedent

Patrick Bernier and Olive Martin



&Y vs. *France* is a project started in 2007 by French artists Patrick Bernier and Olive Martin in collaboration with two lawyers, Sébastien Canevet, a specialist in intellectual property, and Sylvia Preuss-Laussinotte, a specialist in immigration law.

Based on the story "A Tale for Creating a Legal Precedent", together they set up a fictional court case in order to create a legal argument, a tool through which illegal immigrants, now turned into co-authors and guardians of site-specific, immaterial artwork, can avoid deportation through the application of intellectual property and cultural heritage laws.

The work itself is presented as a performance in which Canevet and Preuss-Laussinotte, invoking the creative power of law, perform the closing argument of the fictional deportation hearing. The legal argument created in the performance has complete legal plausibility and can be used in front of a court.

A Tale for Creating a Legal Precedent

PATRICK BERNIER

TRANSLATED FROM FRENCH BY SIMON WELCH

At the Administrative Court of N., on the morning of September 20th, a foreign woman whose situation is irregular, and to whom the prefect has served a deportation order, rises to address her final appeal to the judge.

Your Honour, I appear before your Court to contest the deportation order that the Prefecture of N. has served to me. If you uphold this order, I will be deported to the country that I managed to escape from only at the cost of painful sacrifices and at considerable risk. The Asylum and Immigration Tribunal of your country did not believe the reasons that forced me to leave and refused me asylum. Today, returning would represent an infringement of my private life and a danger to my life itself which seems inadmissible. Regardless of my esteem for you, I have no hope that you will be susceptible to my arguments, given the political and economic relationship that your country is currently cementing with my country of origin: everything is fine there now, your Honour, everything is fine there! However, before you give the green light to my deportation, let me warn you that I will not be the only one to leave the territory, because I carry with me an artwork conceived in collaboration with P., an artist from your country. Don't bother lowering your eyes to my belly, you won't learn anything: I am not pregnant. I am not expecting a child whose birth would give me the right to remain in this country. My relationship with P. is merely friendly and artistic. He has confided his part of the artwork to my memory; I am its guardian and interpreter, the co-author insofar as my memory effects it. This artwork is a story: the story of an artistic project and its effects. Please listen to it as I tell it today, I will tell it differently tomorrow.

Some time ago, an exhibition curator of international renown invited P. to participate in a shared curatorial experiment. He invited him to select ten works by different artists who would be exhibited along with others in a well-known London gallery. A few days later, P. read in the press that a 28-year-old Iraqi had died at the entrance to the Channel Tunnel, crushed under the truck he was trying to hang on to in order to reach England. This fatal attempt struck him as being like a photographic negative of the curator's proposition. The invitation to present works across the Channel was superimposed on the impossibility for some people to cross this little stretch of water. Henceforth, when invited to send artworks, how could one send people instead? Now, P. had recently begun working with a storyteller to whom he confided his artistic experiments in order to publicly transmit them, the storyteller modifying them according to his know-how and his own memory. Thus the idea of creating collaborations between well-known artists and people in transit was formed; conceiving works that would not take the form of an object, a piece of writing or any other tangible form but would retain an immaterial aspect so that it fell to their guardians to reconstitute them by employing their own faculties such as





storytelling, playing an instrument, dancing, singing or giving instructions! The presentation of these works of art in London would necessitate the crossing of the Channel by the co-authors and exclusive interpreters of these original artworks. These works would thus confer to stowaways the status of couriers.

He contacted artists, researchers, choreographers, film directors and composers whose research and approaches seemed to correspond to this proposition. It seemed important to him to go beyond mere sponsorship, it should be a real collaboration which would enrich everybody. Artists responded and collaborations with "undocumented people" started with the help of refugee support groups. A choreographer showed a sequence of movements that he had observed in the recent history of contemporary dance to a young Kurd who then performed it and completed it with new gestures. A composer created a piece of music for an instrument that an Afghan had constructed during his journey. A conceptual artist evoked a sculpture in a few words for a Nigerian woman to subsequently sculpt using other words that were tinged with nostalgia.

The carriers of artworks wrote to the French and British authorities to obtain the right to enter Britain and honour the invitation to present the work of which they were the co-authors, guardians and interpreters. They received no reply. The artists then wrote to obtain passage for the people carrying their works so that they could be presented in London. The prefect replied that, given the irregular situation of the people in question, it would not be possible to comply with their request, reminding them that any help with entry or residence extended to a person in irregular circumstances constituted an offence. P. wrote, as assistant curator of the exhibition, to request permission for the passage of the ten people carrying the works that he had selected. He received the same reply with the reminder that the penalties for the aforementioned offence are at least doubled when committed by an organised group. The main curator wrote that the refusal of transit of the ten persons concerned would eliminate important works from his exhibition. He received a letter from the British authorities explaining that it was not possible to comply with his request because of bilateral agreements signed between the French interior ministry and the British Home Office. The director of the gallery did not write because he was afraid of the reaction of his State sponsors.

None of the couriers were authorised to enter Britain. On the day of the opening in London, the public found ten title cards for the absent works next to the works selected by the other assistant curators. The titles of the artworks were displayed along with the names of the co-authors accompanied by a text explaining that the French and British authorities had refused to grant passage to the author-interpreters of these works and that the organisers regretted not being able to present them. Visitors were invited to send a letter of complaint to the authorities. Many did so but none received a response. Some of the artists who had collaborated with the couriers were present. They were put under pressure to present their works themselves but refused, speaking instead of their experiences. The story circulated. A boycott was organised that united the disgruntled artists unhappy at seeing their works enriching those they would rather denounce. Musicians who wished to free themselves from the major multinationals, authors avoiding publishing (because it is mostly in the hands of arms dealers) and artists disgusted with feeding a speculative market, all decided to no longer publish, exhibit or represent things. They remembered that, in order to allow forbidden works to continue to circulate, men and women from a literary resistance movement each committed a work to memory and recited it to anyone who wished to hear it. Ready to return the favour, now that it was no longer a case of books circulating hidden under coats but rather men

hidden under trucks, our artists were prepared to entrust their latest creations to the memory of those without documents and without rights whose very existence was denied. They banned any tangible form of their artworks (whether books, films or discs) that might lead to the circulation of the work without the guardian. The works were necessarily collaborative, the guardian adapting the work to his or her memory and enriching it with his or her own history and knowledge. The guardian reconstituted it as he or she wished, in a more or less whole, fragmented, hybrid or original manner.

At first, the illegal situation of the carriers of artworks obliged presentations to take place during clandestine meetings. One day a woman was arrested. Her situation was irregular as she was an “undocumented person”, but she was also the guardian of an artwork. The court did not consider that the fact of containing a piece of intangible national cultural heritage constituted an obstacle to deportation and upheld the deportation order despite the protestations of the artist co-author who happened to be present and who appealed, a bit inconsequentially, to the inalienable rights of authorship. During her detention prior to deportation a number of enthusiasts requested visiting rights to hear the work. The detention centre switchboard was saturated with calls from people asking for information about visiting times, making the place resonate like a performance venue.

The number of collaborations increased. It was no longer just artists who entrusted their creations to the memories of “undocumented people”: scientists confided their discoveries, the venerable their memoirs, and chefs their recipes. The very memory of the country was gradually exiled at the same pace as the deportations.

Their fame crossed borders, despite the absence of artworks and individuals. Artists of all countries put pressure on their authorities to allow entry to foreign carriers of works of art. Refusal by the authorities gave rise to a feeling among local artists that they were out of touch, new things only arriving in bits and pieces reported by travellers who may have heard the work in another country. Often the story was second-hand or transmitted via several people and thus by various memories. They became fabulous, combining embellishments encountered in various exhibitions or conferences. The art world started to desert the closed countries. The artistic buzz crossed frontiers. Transit camps of foreigners mutated into art centres, while artistic institutions in closed countries withered away. So, to avoid collections being hit with obsolescence and museums with lethargy, consultants from these countries softened up and made exceptions for the passage of people carrying artworks. But they are still waiting for a judge, who could be an aesthete, to break the deportation order issued against one of them.

You’ve been warned, my thanks and greetings.

Judgement under deliberation.

P.S. The exhibition *I Am a Curator* was conceived by Per Hüttner for the Chisenhale Gallery in London in November 2003. The project as described was not accepted by the gallery and has remained in the planning stage.



Građanin s grižnjom savjesti

Umjetnički imunitet u vrijeme vladavine zakona

Aldo Milohnić

Sa slovenskoga prevela Marina Miladinov

Za aplet Shakespeareove "mračne komedije"⁰¹ *Mjera za mjeru* (*Measure for Measure*) započinje hirovitom odlukom bečkoga vojvode da privremeno napusti prijestolje i prepusti ga namjesniku Angelu. Nešto kasnije vojvoda će pojasniti prave razloge za tu odluku svome povjereniku, fratru Tomi: "On [Angelo] misli da sam oputovao u Poljsku; jer tako sam razglasio u uši puka, i tako se to vjeruje." Ali to je samo varka, jer vojvoda je ostao u Beču i pod krinkom, prerušen u fratra, promatra što se zbiva u gradu za vrijeme njegove navodne odsutnosti. Shakespeare se tako služi priručnim motivom vladara koji drži podanike u uvjerenju da ga nema, a ustvari ih cijelo vrijeme promatra iako oni toga nisu svjesni.

"Vi biste htjeli znati zašto sve to činim?" kaže vojvoda začuđenom fratru Tomi. "Oštrozub zakon i statuti naši strogi, uzde neophodne za nepokorne konje, devetnaest su ljeta mirno spavali", kaže vojvoda. Nitko ne mari za njih jer, kako objašnjava dalje, "naše naredbe na djelu kad su mrtve, same umiru, a tad Sloboda drsko za nos vuče Pravdu". Ukratko, u gradu vlada anomija i "sav dekorum u bestrag ode". Na Tomino očekivano pitanje zbog čega se vojvoda sam ne pobrine za to da se zakoni poštuju, i zbog čega tu zadaću prenosi na Angela, vojvoda odgovara: "Bila je moja greška popuštati puku; sad bi bilo tiranstvo tući ga za ono što činit mu naložih; jer zlo nalažemo kad zlodjelo svoj prolaz ima slobodan, a kazne nema."

Vojvoda se, dakle, služi varkom kako bi u državi uspostavio političke odnose koji će mu na kraju donijeti znatnu korist: narod će se donekle opametiti zahvaljujući čvrstoj "legalističkoj" ruci privremenog suverena, njegova namjesnika Angela – koji je doslovce vojvodin "anđeo" na prijestolju ili, prema vojvodinim riječima, njegovo "drugo ja" – a kada se vojvoda vrati s navodnog putovanja, narod će ga dočekati kao osloboditelja i dobrog oca.

⁰¹ Francè Koblar, koji je napisao popratni tekst uz slovenski prijevod Mateja Bora, također ju je nazvao "turobnom" ili "ozbiljnom" komedijom, citirajući Coleridgea, koji ju je čak nazvao mučnom, dapače, jednim mučnim Shakespeareovim djelom. Francè Koblar, "Spremne besede" [Komentar], u: William Shakespeare, *Milo za drago* (Ljubljana: Slovenska matica, 1962.), str.144. Ovdje je korišten sljedeći hrvatski prijevod: *Mjera za mjeru*, prev. Josip Torbarina (Zagreb: Nakladni zavod Matice hrvatske, 1987.) (op. prev.).

Nitko mu neće moći predbaciti da je tiranin, budući da je netko drugi – u ovom slučaju njegov namjesnik – bio taj koji je obavio prljavi posao i tako učinio upravo ono što je vojvoda najviše želio: da se dosljednim provođenjem najstrožih zakona ponovo “zauzda” raspojasani narod, koji živi odviše slobodarskim životom. Angelo je, naime, dobio neograničene ovlasti, koje može vršiti po vlastitu nahođenju, što doznajemo već u prvom prizoru: “Vama je i meni svrha ista”, kaže vojvoda Angelu, “zakon ublažite ili potkrijepite kako vam srce kaže.”

Dakako, možemo reći da vojvoda time nije zatražio od svoga namjesnika da rigoroznije provodi postojeće zakonske propise. U drugom prizoru mladi pjesnik Claudio, prva žrtva novog režima, kojemu prijete smrtna kazna zbog raskalašenosti – što je s gledišta današnje penologije itekako nerazmjerna kazna za počinjeni prekršaj protiv javnog morala – tuži se da je Angelo probudio “sve znane kazne što su visjele o zidu kao nesvjetlano oružje, a da ga nitko u devetnaest zodijskih znakova nosio nije”. Namjesnik je, dakle, postao većim katolikom od pape: sankcije koje su u vrijeme vojvodine vladavine bile samo potencijalna prijetnja prestupnicima sada se dosljedno provode – strogo “po slovu zakona”, kako mi to kažemo. Time je već na samom početku stvorio lik disidenta, koji je dodijeljen – u skladu s očekivanjima, mogli bismo reći – mladom umjetniku, odviše slobodoumnom (ili možda samo lakomislenom) literatu Claudiju.

Shakespeare piše u vrijeme kojemu su povjesničari nadjenuli ime “rani novi vijek”, dakle u vrijeme prije Francuske revolucije, kada je vlast još uvijek bila u rukama apsolutističkog (više ili manje “prosvijećenog”) vladara. Usporedimo li tu još uvijek “predmodernu” metodu represivne subordinacije apsolutističkom vladaru s, recimo, ideološkim horizontom današnjeg, kasnog/razvijenog kapitalističkog društva, brzo ćemo ustanoviti da suvremena neoliberalna vlast koristi suptilnije, ali jednako učinkovite pristupe pri uspostavi ideološke hegemonije. Taj mehanizam Althusser je objasnio pomoću koncepta *interpelacije*: “pojedinač je interpeliran u (slobodan) subjekt kako bi se mogao slobodno podrediti nalogima Subjekta, kako bi, dakle, mogao (slobodno) prihvatiti vlastitu podređenost i zatim ‘sam od sebe izvršavati’ postupke i djela svoje podložnosti”. Subjekti mogu biti “samo kroz podložnost i za podložnost” te stoga “funkcioniraju sami od sebe”.⁰² Ukratko, kod Althusserova “dobrog” (što znači podložnog i poslušnog) subjekta radi se o tome da je dovoljan već ideološki mehanizam interpelacije kako bi se interpelirani subjekti pokoravali vlasti. Privlačnost mehanizma je u tome da za stvaranje “krotkih” podanika nisu potrebne baš nikakve represivne mjere, jer ljudi se podrede i bez toga te čak i ne primijete da su se podredili, budući da vjeruju kako je to njihova “slobodna” odluka. Taj čuveni “slobodni izbor” liberalno-građanskoga subjekta u biti je također specifičan oblik ropstva te ga neki stoga nazivaju i “liberalnim ropstvom”.⁰³ Temelj tog novovjekovnog sužanjstva je ideološki konstrukt “slobodnog subjekta”, koji vlastitu podložnost spontano doživljava kao višak slobode.

Ovdje dolazimo do važnog obrata u percepciji Shakespeareove drame. Kako bi postigao da Angelo dosljedno provodi diktaturu zakona – i da tu diktaturu “vladavine zakona” provodi čak s većim trudom nego što bi to činio da mu je bilo izričito naređeno – vojvoda mu daje na raspolaganje “slobodni izbor”. Dakle, Beč iz Shakespeareove drame je umjetno (laboratorijski) proizvedena situacija *nakon* Francuske revolucije u vremenu *prije* nje. Osim toga majstor elizabetanske dramatike već je 1604. godine, kada je napisao dramu *Mjera za mjeru*, anticipirao koncepte koji su se razvili tek u 18. stoljeću, kao što su, na primjer, “pravni despotizam”, o kojemu su govorili francuski

02 Louis Althusser, “Idéologie et appareils idéologiques d’État (Notes pour une recherche)”, u: *Positions 1964-1975* (Pariz: Les Éditions sociales, 1970.), str.67-125.

03 Jean-Léon Beauvois, *Traité de la servitude libérale. Une analyse de la soumission* (Pariz: Dunod, 1994.).

fiziokrati, i pravna država kakvu je opisao Immanuel Kant u djelu *Metafizika čudoređa* iz 1797. godine. Vojvodino objašnjenje da je zadatak obuzdavanja naroda prenio na namjesnika kako mu ne bi predbacivali da je tiranin proziran politički je scenarij; ustvari, vojvoda čini upravo ono što navodno (deklarativno) želi izbjeći – i pritom koristi ideološke mehanizme na kojima se zasnivaju suvremena društva slobodnih subjekata i krotkih potrošača. Ukratko, nisu li vojvodina moralistička patetika (poboljšati narod pomoću zakona) i Angelov pravni fetišizam (slijepa vjera u snagu prava, u “vladavinu zakona”) sijamski blizanci, koji sudbonosno obilježavaju “mučnu” atmosferu ove Shakespeareove “mračne komedije”? Iz diktature zakona vjerojatno niti ne može nastati ništa drugo do gorčine, i *Mjera za mjeru* doista je sve prije nego laka komedija.

Kada smo u prethodnom odlomku spomenuli fiziokrate i Kanta, već smo se pomaknuli iz elizabetanske Engleske s početka 17. stoljeća u drugu polovicu 18. stoljeća, odnosno u predrevolucionarnu Francusku i Prusku u vrijeme Fridrika Velikog. “Prosvijećeni apsolutizam” uveo je nove pravne standarde; započelo je dugotrajno razdoblje legalizma, “kulta zakona”. U nastojanju da ostvari puni nadzor nad pravom kao (ideološkim) društvenim vezivom, “kultura ekonomskog liberalizma opremila se željeznim oklopom autentičnog pravnog apsolutizma”, kako kaže povjesničar europskog prava Paolo Grossi.⁰⁴ Suprotnost između ekonomskog liberalizma i pravnog apsolutizma je samo privid, jer već je rano prosvjetiteljstvo s “ocem liberalizma” Johnom Lockeom propovijedalo “svetost vlasništva”, a za njegovo neometano gomilanje i zaštitu tadašnje je građanstvo u usponu trebalo snažnu državu. Građanin, politički slobodan član građanskoga društva, ulazi u odnose sa sebi jednakim građanima u civilnome društvu; jednakost u civilnome društvu preduvjet je za nejednakost u sferi proizvodnje. Za kapitalistički način proizvodnje je karakteristično da se vlasnici kapitala i radne snage susreću na tržištu kao slobodne ugovorne stranke – pravni subjekti. Za razliku od Kanta, koji je još bio zarobljen u konceptualnom imaginariju feudalnih društvenih odnosa te stoga subjekt kod njega još nije bio na razini apstraktne, samodostatne monade, Hegel već ima koncept univerzalnog, jednakopravnog subjekta. Taj univerzalni i apstraktni subjekt je vjerni pratitelj građanskoga prava od kasnog 18. stoljeća do danas. On je istodobno proizvod i uvjet društvene proizvodnje, koja se odvija na osnovi robne razmjene i nadničarskog rada, a njegova apstraktnost je, rečeno metaforom Paola Grossija, “učinkovit smokvin list” koji prikriva nepravdičnost buržujuskoga društva.

Pravna država, jednakopravnost i imunitet

Povijesna pobjeda kapitalističkog načina proizvodnje nad feudalnim bila je istovremeno pobjeda načela pravne subjektivnosti. Kada se s pobjedom tog načela odnosi među ljudima juridiziraju, odnosno poprimaju oblik odnosa među pravnim subjektima, zajedno s njima razvija se i pravni sustav, koji upravo u kapitalizmu doseže svoj povijesno najrazvijeniji oblik. Odlučujuću ulogu u nastanku pravnog subjekta građanskoga prava odigralo je privatno vlasništvo. Odnos vlasnika sredstava za proizvodnju prema neposrednim proizvođačima služi kao povijesna i materijalna osnova za analizu razlika između pojedinih pravnih sustava. Forma tog odnosa (primjerice, u kapitalističkom načinu proizvodnje to je izrabljivanje) odlučujuća je crta razgraničenja, koja u krajnjoj instanci određuje društveno-ekonomsku formaciju, a time i za nju karakterističan pravni sustav.

⁰⁴ Paolo Grossi, *L'Europa del diritto* (Rim i Bari: Laterza, 2007.)

Političko-pravni ekvivalent suvremenog kapitalizma je građanska država, koja se naziva još i pravnom državom (*legal state*, *Rechtsstaat*), odnosno državom u kojoj vlada zakon (*rule of law*). Jedan od osnovnih elemenata pravne države je jednakost pred zakonom. Načelo jednakosti pred zakonom trebalo bi jamčiti pravo na jednaku i nediskriminirajuću pravnu sigurnost, zajedno s temeljnim pravima i slobodama koje definira ustav. Međutim, unatoč tom temeljnom načelu pravne države, suvremeni pravni sustavi nekim društvenim ili strukovnim skupinama dodjeljuju posebna prava. Klasična ilustracija te situacije je, recimo, imunitetna zaštita saborskog zastupnika, koji bi u okviru političkog sustava parlamentarne demokracije trebao predstavljati "glas naroda" u okviru zakonodavne grane vlasti. Jedan od prvih primjera posebno zaštićenih predstavnika narodne volje u predstavničkim tijelima bili su narodni tribuni (*tribuni plebis*) u antičkome Rimu, koji su se smatrali nedodirljivima (*sacrosancti*). U današnjem značenju te riječi zastupnički imunitet povezujemo specifično s razvojem pravnog sustava kroz povijest engleskog parlamentarizma, gdje se radilo o odmjeravanju snaga između krune i parlamenta. Od 14. stoljeća nadalje, naime, više nije bilo tako samorazumljivo da će zastupnik završiti u zatvoru jer je u parlamentu rekao nešto što nije bilo po volji tadašnjem kralju.

Imunitet je oblik posebnog, osobito zaštićenog, dakle privilegiranog statusa, koji možemo shvatiti i kao iznimku, odnosno svojevrsno dokidanje nekog općeg i općevažećeg pravila, što načelo jednakopravnosti svakako jest (barem u okviru sustava pravne države). Jednakopravnost je jedno od središnjih ustavnopravnih načela, koje jamči jednakost u zakonu i pred zakonom, ali je istodobno i proturječno, budući da ostavlja otvorena vrata za arbitrarnu, subjektivnu prosudbu u slučajevima gdje su odstupanja od tog temeljnog načela pravno "dopustiva".⁰⁵ Općenitost i apstraktnost modernog prava je, doduše, normativni kontekst koji jamči i dosljedno provođenje načela jednakopravnosti, ali kako ističe Miro Cerar, "apstraktnost i općenitost prava nisu naprosto nekakve neutralne pravne tehnike, nego oba navedena svojstva prava sadrže važne ideološke funkcije".⁰⁶ Osim toga, pravna jednakost je "po svojoj temeljnoj naravi formalna jednakost, budući da upravo zbog svoje općenitosti (i apstraktnosti) pravne subjekte i njihovo djelovanje tretira tipizirano, ne uzimajući u obzir brojne konkretne razlike među njima".⁰⁷ Načelo jednakosti pred zakonom (*l'égalité devant la règle de droit*) znači, pojednostavimo li ga donekle, dosljedno provođenje propisa u upravnoj, sudskoj i drugoj pravnoj praksi, ili drugim riječima, obveznost tih instanci da "u konkretnoj situaciji primijene odgovarajuću pravnu normu i pritom ne čine iznimke koje nisu predviđene zakonom".⁰⁸ S druge strane, načelo jednakosti u zakonu (*l'égalité dans la règle de droit*) nalaže zakonodavcu da poštuje jednakopravnost pravnih subjekata, što ga ustvari ne obvezuje na jednako tretiranje u apsolutnom smislu, nego samo na jamčenje distributivne pravičnosti (jednak tretman jednakih činjeničnih stanja i sukladno različit tretman različitih stanja). Naličje relativizacije načela jednakopravnosti su neke pravno privilegirane kategorije osoba, koje uživaju posebna jamstva. Osim zastupnika i sudaca, kojima imunitet jamči posebnu pravnu zaštitu u obavljanju njihove funkcije, ustavno priznata posebna prava imaju i neke druge strukovne skupine (npr. novinari, znanstvenici, umjetnici itd.), kao i manjine, koje uživaju posebnu skrb zbog ishodišno nejednakog položaja u društvu (u takvim slučajevima govorimo o tzv. pozitivnoj diskriminaciji). Imunitet je, doduše, pravni pojam i njegovo značenje definirano je unutar pravnog sustava, ali ga u ponešto proširenom ili prenesenom značenju možemo primijeniti i na polje umjetnosti. Ustavi i kazneni zakonici modernih

05 "U apstraktnom pravnom (npr. zakonodavnom) uređenju društvenih odnosa potencijalno se arbitrarno stvaraju razlike, a uslijed toga i nejednakosti, ondje gdje ih ustvari nema, odnosno nije ih bilo prije normativnih mjera. S druge strane, zakonodavac potencijalno arbitrarno izjednačuje pred zakonom stvarne situacije i pojedince koji su u realnom društvenom životu nejednaki, odnosno različiti." Benjamin Flander, *Pozitivna diskriminacija* (Ljubljana: Fakulteta za družbene vede, 2004.), str.64-65.

06 Miro Cerar, "Nekateri (ustavno) pravni vidiki načela nediskriminacije" [Neki (ustavno-)pravni aspekti načela nediskriminacije], u: *Enakost in diskriminacija: sodobni izzivi za pravosodje* [Jednakost i diskriminacija: suvremeni izazovi za pravosuđe], ur. Dean Zagorac (Ljubljana: Mirovni inštitut, 2005.), str.33.

07 Isto, str. 36.

08 Flander, nav. djelo, str.68.

građanskih država tako jamče određeni (funkcionalni) imunitet umjetnicima, odnosno, želimo li biti sasvim precizni, svima onima koji "stvaraju" ili se "izražavaju" na području umjetnosti. Slovenski ustav (Član 59) tako govori o zajamčenoj slobodi "umjetničkog stvaranja", širi kontekst takozvane slobode govora zajamčen je Članom 39, koji govori o slobodi "izražavanja misli, govora i javnog nastupa, tiska i drugih oblika javnog obavješćavanja i izražavanja", a Kazneni zakonik (Član 169) kaže da se neće kazniti "onaj tko se o drugome uvredljivo izrazi u znanstvenom, književnom ili umjetničkom djelu" (pod određenim uvjetima).

Pravni sustavi suvremenih parlamentarnih demokracija imaju, dakle, ugrađene specifične mehanizme ili institucije koji onim pojedincima koji se bave određenom, s ustavnopravnog gledišta osobito važnom djelatnošću, jamče posebnu sigurnost. Takva jamstva trebala bi uravnotežiti kolizije prava, koje su predvidljive i također česte u obavljanju tih zanimanja ili djelatnosti. Sudska praksa poznaje brojne primjere u kojima, na primjer, s jedne strane u koliziju dopijevaju pravo na privatnost, čast i ugled te s druge strane pravo na umjetničko stvaranje i izražavanje. Tada sud mora odvagati dokle može doseći ovo potonje, a da odviše ne ugrozi druga ustavna prava. Kako pokazuju neki važni slučajevi ustavnih presuda posljednjih godina, u sudskoj praksi se već ustalilo da pridaje veliku važnost upravo "specifičnosti umjetničkog stvaranja", dok je manje naklonjena apsolutnom očuvanju prava na privatnost s kojima ono dopijeva u koliziju. Dokle god umjetničko djelovanje uživa posebnu zaštitu i ubraja se u iznimke od pravila (kao u već spomenutom slučaju Člana 169 Kaznenog zakona), suci imaju na raspolaganju najrazličitije mogućnosti da odluče u korist prava na "stvaranje" i "izražavanje" kada je to pravo u koliziji s nekim osobnim pravom. A ipak, stvar nije tako jednostavna. S gomilanjem novih propisa i sve većom pravnom normiranošću nekog društvenog područja istodobno se sužava "manevarski prostor" umjetnika koji svojim djelom stupa u neku vrstu interakcije s tim društvenim područjem.

Imunitet i "definijski monopol" moderne umjetnosti

Za pravnu struku možda je najnesnosnije to što je u 20. stoljeću umjetnik prisvojio pravo na definiranje (ne)umjetničkog karaktera vlastitog rada; njegova "samoutemeljujuća" gesta zatim se materijalizira u institucionalnim tokovima umjetničkog "sustava".⁹ Pozitivno pravo ne može prihvatiti taj "definijski monopol" umjetnika, kako to naziva Schack, "koji subjektivno određuje što je to umjetnost".¹⁰ Naime, pravo ne zna baratati – ili barem tako smatra – pojmovima koje nije moguće jednoznačno definirati. Bez definicija ključnih pojmova koji se koriste u zakonu nema niti samog zakona, a bez zakona nema ni presude, jer ona je moguća samo na osnovi odgovarajućeg zakonskog propisa. Zato su zakonski propisi u pitanjima umjetnosti za pravnike i autore zakona "noćna mora", kako je to slikovito izrazio Paul Kearns.¹¹ Za Haima Schacka je umjetnost tek "relativni pravni pojam", budući da je njegov sadržaj raznolik te često neodrediv i neuhvatljiv.¹² Osim toga, on je i povijesno određen, kao što je zorno prikazao Tatarkiewicz u svojoj *Povijesti šest pojmova*: "Umetnosti koje mi prvenstveno imamo na umu kad govorimo o 'umetnostima' nekad su bile tretirane kao mehaničke, i to s toliko malim značajem da nisu zasluživale ni da u popisima budu navedene."¹³ Tatarkiewicz zaključuje kako je današnje poimanje umjetnosti paradoksalno: "Desilo se nešto naročito: antičko-srednjovjekovni pojam umetnosti – ona

09 Anders Burman, koji se poziva na Georga Dickieja, objašnjava da je za institucionalnu teoriju "umjetnost sve ono što svijet umjetnosti, i to ne samo umjetnici, nego i trgovci umjetninama, kustosi, kolekcionari, povjesničari umjetnosti, kritičari i drugi, proglase i priznaju kao umjet. ost." Anders Burman, "Expanding the Field. Politics and Aesthetics in an Unbounded Age", u: *Reality Check*, ur. Madeleine Park i dr. (Trondheim: Trondelag Senter for Samtidkunst, 2010.), str.21.

10 Haimo Schack, *Kunst und Recht: Bildende Kunst, Architektur, Design und Fotografie im deutschen und internationalen Recht* (Köln: Carl Heymanns Verlag, 2004.), str. 4.

11 "Umjetničko' ne posjeduje dovoljno jasnu definicijsku srž da bi se moglo praktično koristiti kao pravni kriterij. Njegova definicija skroz je polumračna, iako u pogledu opisa umjetnost ima neke priznate žanrove. Postoje tradicionalne klasifikacije umjetnosti – slikarstvo, crtež, kiparstvo... – ali ne postoji konačna definicija umjetničkoga *per se*. Umjetnost je zbirna imenica, ali ne znamo opseg njezina zbira. Umjetničko je pridjev koji označava svojstvo svoga zbira, ali nedostaje mu jasnoće, kako u njemu samome, tako i u jeziku, a pravo kao institucija nastoji kao svoje kriterije postaviti termine koje može spoznati jednoznačno koliko god je to moguće kako bi njihova zakonska primjena bila čim sigurnija." Paul Kearns, *The Legal Concept of Art*. (Oxford: Hart Publishing, 1998.), str.66.

12 Schack, nav. djelo, str., 2.

13 Vladislav Tatarkiewicz, *Istorija šest pojmova* (Beograd: Nolit, 1980.), str.22.

polazna tačka evolucije – bio je grub, ali jasan, dopuštao je da bude definisan prosto i pravilno. Njen današnji pojam, pak koji je ciljna tačka te evolucije, uži od nekadašnjega i, činilo bi se, određeniji, upravo nije određen, izmiče definiciji.¹⁴

Pritom pravnicima nisu od pomoći ni vrijednosni sudovi o navodno “dobroj” ili “lošoj” umjetnosti, budući da bi u tom slučaju suci podlegli hirovima ukusa i subjektivnim preferencijama, a narav njihova zanimanja zahtijeva objektivnija mjerila. S druge strane, sudac se u odvagivanju onoga što pripada području umjetničkoga, a što ne, ne bi ništa više smio oslanjati niti na kriterij društvenog statusa dotičnog umjetnika ili njegova umjetničkog djela; umjetnost nije samo ono o čemu kritičari i drugi stručni ocjenjivači umjetničke produkcije pišu hvalospjeve, jer kao što ističe Schack, “i provokativna, mnogima još nerazumljiva ‘anti-umjetnost’ isto tako može biti umjetnost”.¹⁵ Ali dilema pravnika o tome kako precizno zakolčiti granice “umjetničkoga” uvjetovana je prije svega empirijskim pristupom građanskoga prava. Esencijalistički i supstancijalistički pogled građanskoga prava na estetsku sferu je slijepa ulica, budući da opsesivno bavljenje ontološkim definicijama “umjetničkog djela”, “umjetnika” ili “umjetnosti”, koje je slijepo za društveno-povijesne uvjete u kojima se ti pojmovi koriste, nužno zapada u aporije. Izlaz iz tog nemogućeg položaja mogla bi biti teoretizacija koncepta “estetskoga učinka” kakvu je proveo Althusserov krug materijalističke teorije umjetnosti (Macherey, Balibar i drugi), ali građansko pravo nije sposobno za taj skok, budući da je zarobljeno u klasno uvjetovane granice vlastitog djelokruga. Tako pravo pristaje uz pretpostavku da umjetničko djelo ne proizvodi nikakav izvanestetski učinak, i to poricanje karakteristično je za “autonomiziranu” sferu umjetnosti. Ako, naime, umjetničko djelo tretiramo u izolaciji, “kao da samo po sebi uspostavlja jednu *potpunu* stvarnost”,¹⁶ ne možemo objasniti zbog čega se uopće pojavilo i kakvi su njegovi učinci. Osim toga, kako kaže Macherey, “umjetničko djelo nikada ne dolazi samo: uvijek ga određuje postojanje drugih umjetničkih djela” koja mogu pripadati drugim sektorima produkcije.¹⁷ Materijalistička analiza je, doduše, izrazito kritična prema pojmu “umjetničko djelo” i priznaje ga “samo kako bi ga razotkrila kao nužnu iluziju”.¹⁸ Estetski učinak je, naime, “i učinak na društveno određene pojedince, koji ih materijalno prisiljava da književne tekstove tretiraju na određeni način”. U slučaju književnog teksta koji je predmet Balibar-Machereyve analize, to znači da ga *prepoznavamo* kao “književni” tekst, da ga “estetski” priznajemo.¹⁹

Kada sudi u pitanjima vezanim uz umjetnost, pravni sustav prisiljen je suočiti se s brojnim paradoksima i tražiti praktične izlaze iz proturječnih situacija. Pritom si pravo pomaže tako da *via facti* priznaje autonomnost instituciji umjetnosti, jer često se oslanja upravo na svjedočanstvo pripadnika te institucije – povjesničara umjetnosti, sudski ovlaštenih procjenitelja umjetnina i tome slično. Institucionalna teorija umjetnosti, kako je naziva George Dickie (a u tu tradiciju pripadaju i Arthur Danto, Morris Weitz, Paul Ziff i drugi) takoreći se sama nudi pravnom sustavu kao praktična ideološka osnova za esencijalističko i supstancijalističko shvaćanje umjetnosti. Na položaj umjetnosti u odnosu prema pravnoj sferi utječu i definicije nekih pojmova (npr. umjetnost, umjetničko djelo, umjetnički sustav, umjetnička institucija i dr.) kojima se bavila upravo institucionalna teorija. U potrazi za mogućim definicijama umjetnosti ti autori polaze od postupka koji bi trebao biti uvjet za mogućnost da se određeni artefakt proglasi umjetničkim djelom. Premješajući gledište s vrijednosne ocjene objekta, institucionalna teorija uvodi pojam *statusa* koji stječe objekt koji je “kandidat” za umjetničko djelo.

14 Isto, 29-30. Tatarkiewiczova usporedba je duhovita, ali i ponešto varava, jer usporedimo li današnje shvaćanje umjetnosti s antičkim, ustanovit ćemo da imamo posla s diskontinuitetom prije nego kontinuitetom povijesnog “razvoja”. Za razliku od današnje pojmovne mistike, antička “umjetnost” (*téchne*) oslanjala se na vještinu, na spretnost djelovanja po određenim pravilima.

15 Schack, nav. djelo, str. 5.

16 Pierre Macherey, *Pour une théorie de la production littéraire* (Pariz: François Maspero, 1966.)

17 Isto.

18 Étienne Balibar i Pierre Macherey (1980.), “Sur la littérature comme forme idéologique: quelques hypothèses marxistes”, *Littérature* 13/4 (1974.), str.29-48.

19 Poznajemo, međutim, i brojne “granične slučajeve” u kojima više nije sasvim jasno ima li tekst status fikcijske pripovijesti ili ne. Balibar i Macherey smatraju da je estetski učinak teksta ovisan o interpretacijskim praksama: “Književni tekst je onaj tekst koji je priznat kao književni, a priznat je kao književni upravo onoliko dugo i u onoj mjeri koliko praktički izazove interpretacija, kritika i ‘čitanja’. Upravo zato neki tekst sasvim realno može *prestati* biti književni tekst ili pak *postati* književni u odnosima kojih ranije nije bilo.” Isto.

Za Danta je, na primjer, dovoljno već to da se objekt smjesti u "svijet umjetnosti" (umjetnička teorija, povijest umjetnosti) pa da možemo govoriti o umjetničkom djelu. Dickie je donekle oprezniji te akreditaciju za "provođenje" postupka ograničava na instituciju umjetnosti, koja djeluje kao i svaka druga društvena institucija – kroz institucionalne prakse. Božidar Kante preuzeo je bitne elemente obiju teza: "Slika je umjetničko djelo zato što visi u galeriji (koja je dio svijeta umjetnosti), a ne visi u galeriji zato što je umjetničko djelo. Ili – više po uzoru na Dickiejeve definicije – neka stvar je umjetničko djelo ako je artefakt i ako joj je netko tko je za to ovlašten zahvaljujući položaju koji ima unutar institucije svijeta umjetnosti dodijelio status umjetničkog djela (ako ju je imenovao, krstio ili joj odao počast kao umjetničkom djelu)."²⁰ *Modus operandi* institucionalne teorije umjetnosti funkcionira, dakle, na sličnim osnovama kao i Austinova teorija performativa: kao što je kod Austina i sâm izricanje već čin, tako je kod institucionalista i sâm postavljanje artefakta u galerijski prostor umjetnički čin, ili drugim riječima, postavljanje artefakta u galeriju dodjeljuje mu status umjetničkog djela. S druge strane, institucionalna teorija – budući da je tako opsjednuta institucionalnim okvirom "svijeta umjetnosti" – previđa jednu važnu okolnost: sagledamo li situaciju s gledišta "neposvećenog" posjetitelja umjetničkih institucija, slika ipak još uvijek "visi u galeriji" upravo zato što je umjetničko djelo.

Kako institucionalna teorija utječe na položaj "umjetnika" i prava, odnosno privilegije koje on (kao "umjetnik") uživa u okviru pravne sfere? Odgovor na to pitanje proizlazi iz juridičke naravi performativa: činjenice da sud, kao juridička instanca *par excellence*, treba pomoć druge institucije – institucije (ili sustava) umjetnosti – kako bi odlučio što je umjetničko djelo. Njezini stručnjaci, oboružani poznavanjem teorije i povijesti umjetnosti, odvaguju što je umjetnost, a što nije. S druge strane, upravo je sud ona instanca koja odlučuje o tome tko je pozvan suditi (odnosno argumentirati) u pitanjima umjetnosti, budući da u takvim postupcima sudjeluju samo "sudski ovlašteni" stručnjaci. U okviru naše problematike je, dakle, institut "sudski ovlaštenog stručnjaka umjetničke struke" priručna suplementarna institucija koja preuzima ulogu posrednika između autonomnih sfera prava i umjetnosti.

U razdoblju kada je nastala institucionalna teorija umjetnosti, pojavili su se minimalizam i konceptualizam. Minimalistima je još uvijek bio potreban nekakav artefakt kako bi mogli govoriti o "umjetničkom djelu", dok su si konceptualisti donekle olakšali posao, budući da im je naposljetku bila dovoljna samo ideja kako bi se nametnuli umjetničkom tržištu. Tako je, recimo, jedan od vodećih konceptualista, Joseph Kosuth, tvrdio da je za umjetničko djelo dovoljna i sama tvrdnja da je nešto umjetnost: "Umjetnost je definicija umjetnosti."²¹ Prema tome, umjetnost je zatvorena u tautologiju, u okvir koji si je sama nametnula, i nema ambicija da ikada izađe iz tog okvira. Morris Weitz je pokušao probiti taj zatvoreni krug pomoću teze da je umjetnost "otvoreni pojam" i da je u tome razlog zbog čega "stabilna" definicija umjetnosti nije moguća. Neki konceptualisti su tu "otvorenost pojma" iskorištavali za krajnje neobične i vratolomne projekte. Prisjetimo se samo Jeffa Koonsa, kojemu više nije bilo dovoljno *kreirati* umjetničke predmete, nego je to činio i s pripadnicima svoje biološke vrste: vlastitog sina naprosto je proglasio umjetničkim djelom. Poznajemo i slučajeve kada umjetnicima više nije dovoljno proizvoditi autoportrete u obliku slika ili skulptura, nego vlastito tijelo proglase umjetničkim djelom. Primjer takve "samokreacije" je, recimo, Ben Vautier, koji je sam sebe izložio 1962. u jednoj londonskoj galeriji, ili pak Marko Pogačnik, koji je napravio nešto slično četiri

²⁰ Božidar Kante, *Filozofija umjetnosti* (Ljubljana: Založništvo Jutro, 2001.), str.48-49.

²¹ Navod u: Burman, str.21. Autor smatra da ne može biti slučajnost što su se takve tautološke definicije umjetnosti pojavile istodobno s institucionalnom teorijom umjetnosti.

godine kasnije u galeriji u Kranju. Otada su zaredali brojni primjeri uporabe vlastitoga tijela kao umjetničko-vizualnog izražajnog sredstva.

Što učiniti s "umjetničkim imunitetom"?

Suvremeni umjetnik je, dakle, uhvaćen u mrežu hipernormiranog pravnog uređenja, koje sa svakim novim propisom zabije kolac u ogradu njegova umjetničkog vrtića, a istodobno mu laska priznavanjem posebnih, samo njemu svojstvenih prava koja nazivamo relativnim (ili funkcionalnim) umjetničkim imunitetom. Iza ograde kućnoga vrta može raditi što hoće, dokle god time ne smeta susjedne "vrtlare". Ako ih pak zasmeta, pozvat će se na umjetničku slobodu, autonomiju i imunitet. Adorno u uvodu knjige *Ästhetische Theorie* piše da "...apsolutna sloboda u umjetnosti, uvijek ograničena na partikularno, dopijeva u proturječje s trajnom neslobodom cjeline".²² Stallabrass tome dodaje: "Dokle god bude postojala ta šira nesloboda, pojedinačne slobode umjetnosti klizit će nam kao pijesak kroz prste. Iako možda otvaraju utopijski prozor prema manje instrumentalnom svijetu, one su i učinkovit izgovor za opresiju."²³ Dakle, bi li suvremeni umjetnik mogao poduzeti radikalni korak i odreći se privilegije umjetničkog "imuniteta", a u zamjenu zahtijevati jednaka prava za sve, bez obzira na cehovski status?²⁴ Pitanje je primamljivo, ali za uglom vrebaju novi paradoksi: sud bi mu kao "umjetniku" automatski dodijelio to pravo (kao što, recimo, priznaje imunitet i zastupniku koji se na nj ne poziva); a ako bi se tome usprotivio i izjavio da "nije umjetnik", time bi vjerojatno poništio radikalnost geste, budući da bi praksa zbog koje se mora braniti pred sudom na taj način postala sasvim "obična", "ne-umjetnička", "svakidašnja" praksa. Kraj umjetnosti su pak zahtijevali i čak proglasili već mnogi prije njega – tako da bi i to bilo samo jalovo ponavljanje, još jedna isprazna gesta s konzerviranim prizvukom nekadašnje "radikalnosti".

Umjetnost je u suvremenoj građansko-liberalnoj državi dio korpusa čovjekovih prava, i zato pravna sfera jamči suvremenom umjetniku "slobodu umjetničkog stvaranja" bez obzira na to je li dobar ili loš, prost ili profinjen, konzervativan ili progresivan, političan ili apolitičan i tako dalje. Pozivanje na "slobodu umjetničkog stvaranja" je tako praktično pravno sredstvo pomoću kojega "radikalni" umjetnici i sudionici artističko-aktivističkih praksi mogu okrenuti sebi u korist, citiramo li Althussera, jedini ideološki aparat države koji je istodobno i njezin represivni aparat, a to je pravo. Sagledamo li problematiku iz te perspektive, naći ćemo se na području *taktike*, koja je, doduše, legitimna i u mnogim situacijama naposljetku može biti od životne važnosti za sudionike tih procesa. Međutim, ostaje otvoreno *strateško* pitanje: nije li možda "taktično" pristajanje na prerogative *represivnog* organa istodobno i ustupak, odnosno priznavanje legitimnosti upravo onoj *ideološkoj* instanci protiv koje bi trebalo biti upereno koplje radikalne kritike?

22 Theodor Adorno, *Ästhetische Theorie* (Frankfurt a.M.: Suhrkamp, 1970.), str 9.

23 Julian Stallabrass, *Contemporary Art: A Very Short Introduction* (Oxford: Oxford University Press, 2006.).

24 Da bi zbog tog privilegiranog položaja u građanskom pravno-političkom uređenju umjetnik morao imati barem mrvicu grižnje savjesti, tužio se već Rousseau: "Tip čovjeka na koji upućuje Rousseau (...) nije više filozof, nego 'umjetnik', kako ga se kasnije počelo nazivati. Njegov zahtjev za privilegiranim tretmanom temelji se na njegovoj osjetljivosti, a ne više na mudrosti, na njegovoj dobroti i sućuti, a ne više na vrlini. On i sam priznaje delikatnost svoga zahtjeva: on je građanin s grižnjom savjesti." Leo Strauss, *Natural Right and History* (Chicago, IL: University of Chicago Press, 1953), str 293.

Citizen with a Bad Conscience

Artistic Immunity under the Rule of Law

Aldo Milohnić

Translated from Slovenian by Marina Miladinov

he plot of Shakespeare's "dark comedy"⁰¹ *Measure for Measure* begins with the capricious decision of the Viennese duke to abandon his throne for a while and leave it to his deputy, Angelo. Somewhat later, the duke explains the true reasons for this decision to his confidant, friar Thomas: "And he [Angelo] supposes me travell'd to Poland; for so I have strew'd it in the common ear, and so it is receiv'd." But it is only a trick, since the duke remains in Vienna and, masked as

a friar, observes what happens in the city during his supposed absence.

Shakespeare thus uses the handy motif of a ruler who keeps his subjects in the belief that he is not there while watching them in secret.

"You will demand of me, why I do this," says the duke to the surprised friar Thomas. "We have strict statutes and most biting laws, the needful bits and curbs to headstrong jades, which for these nineteen years we have let slip," says the duke. Nobody bothers to obey them, since, as the duke further explains, "our decrees, dead to infliction, to themselves are dead, and Liberty plucks Justice by the nose." Briefly, the city is infected by lawlessness and "quite athwart goes all decorum." Thomas' logical question of why the duke should not enforce the laws by himself, instead of delegating the task to Angelo, receives the following answer: "Sith 'twas my fault to give the people scope, 'twould be my tyranny to strike and gall them for what I bid them do: for we bid this be done, when evil deeds have their permissive pass, and not the punishment."

Thus, the duke uses a trick in order to establish such political relations in his state that will eventually bring him considerable benefit: people will come to their senses owing to the firm "legalistic" hand of the temporary sovereign, his deputy Angelo – who is literally the duke's "angel" on the throne or, quoting the duke, "at full ourself" – and when the duke returns from his supposed journey,

⁰¹ Francè Koblar, author of the commentary to the Slovenian translation of Matej Bor, also called it "sinister" or "serious" comedy, thereby quoting Coleridge, who even called it painful, moreover, the "most painful" work of Shakespeare's. Francè Koblar, "Spremne besede" [Commentary], in: William Shakespeare, *Milo za drago* [Measure for measure] (Ljubljana: Slovenska matica, 1962), 144.

people will welcome him as their liberator and good father. Nobody will be able to criticize him as a tyrant, since it was someone else – in this case his deputy – who did all the dirty work and thus accomplished precisely what the duke wanted most: to “curb” the wanton people, who live too liberal a life, by strictly enforcing the most austere laws. For Angelo has been granted limitless power, which he can use at his own will, as we are informed in the very first scene: “Your scope is as my own, so to enforce or qualify the laws as to your soul seems good.”

To be sure, the duke does not ask Angelo to implement the existing legal regulations more rigorously. In the second scene, young poet Claudio, the first victim of the new regime, threatened with the death penalty for lechery – which is, from the perspective of modern penology, a disproportionately severe punishment for his sin against public morality – complains that Angelo has revived “all the enrolled penalties which have, like unscour’d armour, hung by th’ wall so long, that nineteen zodiacs have gone round, and none of them been worn.” In other words, the deputy has become more Catholic than the Pope: penalties that were only a potential threat to trespassers at the time of the ducal rule are now being carried out consistently – strictly “by the letter of the law,” as we call it. In this way, he has created the figure of the dissident from the very outset, a role that befell a young artist – almost expectedly, we might say – the excessively liberal (or perhaps merely frivolous) man of letters Claudio.

Shakespeare wrote at a time which historians have labelled the “early modern period,” that is, the time before the French Revolution, when power was still residing in the hands of an absolutist (more or less “enlightened”) ruler. If we compare that still “pre-modern” method of repressive subordination to the absolutist ruler with, let’s say, the ideological horizon of today’s late-capitalist society, we will soon notice that the contemporary neoliberal rulers use more subtle, yet equally efficient methods in establishing their ideological hegemony. Althusser has explained this mechanism through the concept of interpellation: “The individual is interpellated as a (free) subject in order that he shall submit freely to the commandments of the Subject, i.e. in order that he shall (freely) accept his subjection, i.e. in order that he shall make the gestures and actions of his subjection ‘all by himself’.” There are “no subjects except by and for their subjection” and therefore they “work all by themselves.”⁰² Briefly, with Althusser’s “good” (meaning subjected and obedient) subject the very ideological mechanism of interpellation is sufficient to make the interpellated subjects obedient to the authorities. The appeal of this mechanism is that it needs absolutely no repressive measures to create “tame” subjects; people will be subjected without even noticing that they have been subjected, believing it to be their own “free” decision. That famous “free choice” of the liberal-bourgeois subject is in essence a specific type of slavery, which is why some have called it “liberal slavery.”⁰³ The basis of this modern slavery is the ideological construct of the “free subject,” who spontaneously experiences his subjection as freedom surplus.

And here we come to an important turn in the perception of Shakespeare’s play. In order to make Angelo consistently implement the dictatorship of law – and to pursue this dictatorship of the “rule of law” with an even greater zeal than he would if he were ordered to do so expressly – the duke offers him “free choice.” Thus, in Shakespeare’s play Vienna is an artificially (in vitro) produced situation *after* the French Revolution at the time *before* it happened. Besides, as early as 1604, when he wrote *Measure for Measure*, the master of Elizabethan drama anticipated concepts that would evolve only in the eighteenth century, such as “legal despotism” as discussed by the French physiocrats, or the rule of

02 Louis Althusser, “Ideology and Ideological State Apparatuses” (trans. Ben Brewster), *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 2001), 123.

03 Jean-Léon Beauvois, *Traité de la servitude libérale. Une analyse de la soumission* (Paris: Dunod, 1994).

law as described by Immanuel Kant in his *Metaphysics of Moral* (1797). The duke's explanation that he transferred the task of curbing the people to his deputy in order not to be reproached for being a tyrant is a rather transparent political scenario; in fact, the duke does exactly what he allegedly (declaratively) seeks to avoid – thereby using the ideological mechanisms on which the modern societies of free subjects and tame consumers are based. Briefly, both the duke's moralizing pathos (improving the people with the help of law) and Angelo's legal fetishism (blind faith in the power of law, the "rule of law") seem to be Siamese twins that fatally determine the "oppressive" atmosphere of this "dark comedy". The dictatorship of law probably cannot yield anything else but bitterness, and *Measure for Measure* is indeed anything else but a light comedy.

When mentioning the physiocrats and Kant in the previous passage, we have already moved away from the Elizabethan England of the early seventeenth century, and reached the second half of the eighteenth century, that is, pre-revolutionary France and Prussia at the time of Frederick the Great. The "enlightened absolutism" introduced new legal standards, which ushered a long era of legalism, the "cult of law." In an attempt at gaining complete control over law as the (ideological) social bond, "the culture of economic liberalism equipped itself with the steel armour of authentic *legal absolutism*," as the historian of European law, Paolo Grossi, has observed.⁰⁴ The opposition between economic liberalism and legal absolutism is only an illusion, since it was already the early Enlightenment, with its "father of liberalism" John Locke, preaching the "sanctity of private property," and in order to secure its undisturbed accumulation and protection, the emerging bourgeoisie of the time needed a powerful state. The citizen, a politically free member of the bourgeois society, established relationships with his equal co-citizens in a civil society, and equality in that civil society was a precondition for inequality in the sphere of production. For the capitalist mode of production, it was characteristic that the owners of capital and those of labour met on the market as free contract parties – as legal subjects. Unlike Kant, who was still a prisoner of the conceptual imagery of feudal social relations, which is why in his work the subject was still not on the level of an abstract, self-sufficient monad, Hegel already had the concept of a universal, equal subject. That universal and abstract subject has been a faithful companion of civil law since the late eighteenth century and has remained so until the present day. It is a product and also a condition of social production, which takes place on the basis of commodity exchange and waged labour, while its abstraction is, using a metaphor of Paolo Grossi's, "an efficient fig leaf" concealing the injustice of the bourgeois society.

Legal State, Equality, and Immunity

The historical triumph of the capitalist mode of production over the feudal one was also the triumph of the principles of legal subjectivity. When this principle won and human relations became juridicized, that is, when they acquired the form of relations between legal subjects, the legal system evolved along with them, and it is precisely in capitalism that it reached its historically most developed version. A decisive role in the emergence of the legal subject of civil law was played by private property. The relationship between the owner of the means of production and the immediate producers supplies a historical and material basis for an analysis of differences between individual legal systems. The form of that relationship (in the capitalist mode of production, for example,

⁰⁴ Paolo Grossi, *L'Europa del diritto* (Rome and Bari: Laterza, 2007).

it is exploitation) is the crucial line of differentiation, which eventually determines the socio-economic formation, as well as the corresponding legal system.

The political-legal equivalent of modern capitalism is the civil state, which is also called a legal state (*Rechtsstaat*), or the rule of law. One of the basic elements of the rule of law is equality before the law. The principle of equality before the law should guarantee the right to equal and non-discriminating legal security, along with the basic rights and freedoms as defined by the Constitution. However, despite that basic principle of the rule of law, modern legal systems grant special rights to certain social or professional groups. A classical illustration of that situation is, for example, the immunity protection of parliament members, who should in the framework of the political system of parliamentary democracy represent "the voice of the people" within the legislative branch of government. One of the earliest examples of specially protected representatives of public will in representative bodies were the popular tribunes (*tribuni plebis*) in ancient Rome, who were considered untouchable (*sacrosancti*). In today's sense of the word, the immunity of representatives is linked specifically with the evolution of the legal system through the history of English parliamentarianism, where it was all about the power competition between the crown and the parliament. From the fourteenth century onwards, namely, it was no longer self-understandable that a representative should end in prison because he said something that did not quite suit the monarch.

Immunity is a sort of specific and specially protected, that is, privileged status, which can also be understood as exemption, that is, a sort of abolition of a general and universally valid rule, which the principle of equality certainly is (at least within the system of the rule of law). Equality is one of the central constitutional and legal principles as equality *in* the law and *before* the law, but is contradictory at the same time, since it leaves an open door for arbitrary and subjective judgment in those cases in which aberrations from this basic principle are legally "acceptable".⁰⁵ To be sure, the universal and abstract nature of modern law is a normative setting that guarantees, among other things, a consistent implementation of the principle of equality, yet as noted by Miro Cerar, "the abstract and general nature of law are not simply neutral legal techniques of a sort; instead, both of these properties of law have important ideological functions."⁰⁶ Besides, legal equality is "by its very nature formal equality, since owing to its very generality (and abstraction) it treats legal subjects and their activities in a typified manner, without taking into account numerous specific differences between them."⁰⁷ The principle of equality *before* the law (*l'égalité devant la règle de droit*) means, if we simplify it to some extent, a consistent implementation of the regulations in administrative, juridical, and other legal practice, or to put it differently, the duty of these instances to "apply an adequate legal norm to a specific situation, thereby not allowing for any exceptions that are not foreseen by the law."⁰⁸ On the other hand, the principle of equality *in* the law (*l'égalité dans la règle de droit*) demands from the legislator to respect the equality of all legal subjects, which actually does not compel him to treat them equally in the absolute sense of the word, but only to grant them distributive justice (equal treatment of equal facts and correspondingly different treatment of different facts). The reverse of this relativization of the principle of equality is the existence of certain legally privileged categories of persons who enjoy special benefits. Besides the parliamentary representatives and judges, who are granted special legal protection and immunity when performing their functions, there are other

05 "In an abstract legal (e.g. legislative) order of social relations, differences are created potentially arbitrarily, which generates inequality where there is actually none, that is, where there was none before the normative measures. On the other hand, the legislator potentially arbitrarily levels real situations and individuals before the law that used to be unequal or different in real social life." Benjamin Flander, *Pozitivna diskriminacija* [Positive discrimination] (Ljubljana: Fakulteta za družbene vede, 2004), 64-65.

06 Miro Cerar, "Nekateri (ustavno) pravni vidiki načela nediskriminacije" [Some (constitutional) legal aspects of the principle of non-discrimination], in: *Enakost in diskriminacija: sodobni izzivi za pravosodje* [Equality and discrimination: modern challenges for the judiciary], ed. Dean Zagorac (Ljubljana: Peace Institute, 2005), 33.

07 Ibid, 36.

08 Flander, op. cit., 68.

professional groups that enjoy special, constitutionally granted rights (such as journalists, scientists, artists etc.), as well as minorities that are granted special care because of their originally unequal starting point within society (in such cases, we speak of “positive discrimination”). Immunity is a legal term and its meaning is defined within the legal system, but it can also be applied to the field of art, albeit in a somewhat extended or metaphoric sense. The constitutions and penal codes of modern civic states thus grant a certain (functional) immunity to artists, or if we wish to be quite accurate, to all those who “create” or “express” themselves in the field of art. Thus the Slovenian Constitution (Art. 59) guarantees freedom of “artistic creation,” a wider notion of the so-called freedom of speech is granted by Article 39, which speaks of the freedom of “expression of thoughts, speech and public performance, press, and other forms of information and expression,” while the Penal Code (Art. 169) states that “anyone who expresses derogation for another person in a scholarly, literary, or artistic work” (under certain conditions) will not be punished.

Thus, the legal systems of modern parliamentary democracies have specific inbuilt mechanisms or institutions that grant special protection to those individuals who engage in a particular, and from the constitutional legal viewpoint, especially important activity. Such privileges should balance the collisions of rights, which are foreseeable and also frequent when performing such professional or other activities. Juridical practice knows many cases in which there is, for example, a collision between the right to privacy, honour, and dignity on the one hand, and the right to artistic creation and expression on the other. In such cases, it is the court that must decide how far the latter may go without excessively threatening other constitutional rights. As some important cases of constitutional judgements have shown in the past years, in juridical practice it has already become common to assign great importance precisely to the “specificity of artistic creation,” while it has been less inclined to give preference to the absolute preservation of the right to privacy, with which the former is often in collision. As long as artistic activity enjoys special protection and counts among exceptions to the rule (as in the aforementioned case of Article 169 of the Penal Code), judges have plenty of possibilities at their disposal to decide in favour of the right to “creation” and “expression” when it comes into collision with a personal right. But then again, the whole thing is not that simple. With the accumulation of new laws and the increasing legal regulation of various social spheres, the “elbow room” of the artist who enters into some sort of interaction with that social field is becoming increasingly narrow.

Immunity and the “Definition Monopole” of Modern Art

For the legal profession, it may seem most intolerable that in the twentieth century the artist has appropriated the right to define the (non-)artistic nature of his own work; his “self-constituting” gesture is then materialized in the institutional circuits of the art “system”.⁰⁹ Positive law cannot accept that “definition monopole” of the artist, as Schack has termed it, “who subjectively defines what art is.”¹⁰ Namely, law cannot deal – or at least believes so – with notions that cannot be defined unambiguously. Without the definitions of key terms used in law, there is no law as such, and without law there is no judgment, since it is possible only on the basis of an adequate legal regulation. For this reason, legal regulations related to art are “a nightmare” for legal experts and legislators, as Paul Kearns has illustratively put it.¹¹ For Haimo

09 Anders Burman, referring to George Dickie, explains that, for institutional theory, “art is whatever is claimed and recognized as art by the art world, i.e. by artists but also by art dealers, curators, keepers, art historians, critics, etc.” Anders Burman, “Expanding the Field: Politics and Aesthetics in an Unbounded Age,” in: *Reality Check*, ed. Madeleine Park et al. (Trondheim: Trondelag Senter for Samtidkunst, 2010), 21.

10 Haimo Schack, *Kunst und Recht: Bildende Kunst, Architektur, Design und Fotografie im deutschen und internationalen Recht* (Cologne: Carl Heymanns Verlag, 2004), 4.

11 “‘Artistic’ does not possess a clear enough definitional core to be practical as a legal criterion. Its definition is nearly entirely penumbra, though, in terms of description, art has some recognised classes. There are traditional classifications of art – painting, drawing, sculpture... – but there is no definitive definition of the artistic *per se*. Art is a collective noun but we do not know the ambit of its collection. Artistic is an adjective connoting the quality of this collection but it requires clarity, of itself and of language, and law as an institution strives to make as its tests terms it can know as unambiguously as possible so that their legal application is as certain as possible.” Paul Kearns, *The Legal Concept of Art*. (Oxford: Hart Publishing, 1998), 66.

12 Schack, op. cit., 2.

13 Vladislav Tatarkiewicz, *Istorija šest pojmova* [History of six terms] (Belgrade: Nolit, 1980), 22.

14 Ibid., 29-30. Tatarkiewicz's comparison is witty, but also somewhat misleading, for if we compare the present understanding of art with that of the classical Antiquity, we will see that we are dealing with a discontinuity rather than continuity of historical "evolution". Unlike today's mysticism of terminology, ancient "art" (*téchne*) relied on skill, on the art of acting according to specific rules.

15 Schack, op. cit., 5.

16 Pierre Macherey, *A Theory of Literary Production*, trans. Geoffrey Wall (London, Henley, and Boston, MA: Routledge, 1978), 53.

17 Ibidem.

18 Étienne Balibar and Pierre Macherey, "On Literature as an Ideological Form" (1974), in: *Untying the Text: A Post-Structuralist Anthology*, ed. Robert Young (London, Henley, and Boston, MA: Routledge, 1981), 87.

19 We know, however, of many "borderline cases" in which it is no longer clear whether a text has the status of a fictional narrative or not. Balibar and Macherey are of the opinion that the aesthetic effect of a text depends on interpretational practices: "Literariness is what is recognized as such, and it is recognized as such precisely in the time and to the extent that it activates the interpretations, the criticisms, and the 'readings'." This way a text can very easily stop being literary or become so under new conditions". Ibid., 94-95.

Schack, art is only a "relative legal term," since its content can vary and it is often evasive and hard to define.¹² Besides, it is also historically determined, as Tatarkiewicz has plainly shown in his *History of Six Terms*: "The types of art that we primarily think of when speaking about 'art' were once treated as mechanic and so insignificant that they even did not deserve to be included in lists."¹³ Tatarkiewicz concludes that today's understanding of art is paradoxical: "Something memorable has happened: the ancient and medieval notion of art – which is the starting point in its evolution – was crude, yet clear, and it allowed for a simple and regular definition. Its modern notion, which is the final point in that evolution, is narrower than it once was, and seems better defined, but is in fact not defined at all, and evades all definition."¹⁴

Thereby legal experts cannot help themselves by resorting to value judgments about allegedly "good" or "bad" art, since it would mean that the judges have succumbed to the caprices of taste and to subjective preferences, whereas the nature of their profession requires more objective criteria. However, in judging what belongs to the realm of art, and what not, a judge should be equally beware of relying on the social status of the artist in question or his artwork; art is not only that which is praised by critics and other expert evaluators of artistic production, since, as Schack has stated, "even the provoking and to many still barely understandable 'anti-art' equally counts as art."¹⁵ But the dilemma of the legal expert about the way in which he could accurately define the borders of the "artistic" depends above all on the empiric approach to bourgeois law. The essentialist and substantialist views on the bourgeois law to the aesthetic sphere is a cul-de-sac, since obsessive preoccupation with the ontological definitions of a "work of art," "artist" or "art", which is blind for the socio-historical context in which these terms are used, will necessarily end in an aporia. A way out of this impossible position might be in the theorization of the concept of "aesthetic effect" as elaborated by Althusser's circle of materialist art theory (Macherey, Balibar, and others), but bourgeois law is not capable of such a leap, since it remains imprisoned within the class-ridden borders of its field. Thus law agrees with the premise that a work of art does not produce any extra-aesthetic effect, and that denial is typical of the "autonomized" sphere of art. Namely, if we deal with an artwork in isolation, "as a reality complete in itself,"¹⁶ we cannot explain why it emerged in the first place, and what its effects are. Besides, as Macherey has stated, an artwork "never comes unaccompanied: it is a figure against a background of other formations", which can belong to different sectors of production.¹⁷ The materialist analysis has been extraordinarily critical towards the notion of "artwork", accepting it only "in order to identify it as necessary illusions."¹⁸ The aesthetic effect, namely, is "also an effect on socially determined individuals, constraining them materially to treat literary texts in a certain way." In the case of the literary text that was the object of Balibar-Macherey's analysis, it means that we recognize it as a "literary" text, that we acknowledge it "aesthetically".¹⁹

When judging on issues related to art, the legal system is forced to face numerous paradoxes and seek practical ways out of contradictory situations. In this predicament, law helps itself by acknowledging autonomy to art *via facti*, for it often relies on nothing else but the testimony of the representatives of that very institution – art historians, officially licensed arbiters for artworks, and the like. Institutional art theory, as George Dickie calls it (and the same tradition includes Arthur Danto, Morris Weitz, Paul Ziff, and others), virtually offers itself to the legal system as a practical ideological basis for the essentialist and substantialist understanding of art. The position of art with regard to the legal sphere is also influenced by the definitions of certain terms (e.g., art, artwork,

art system, art institution) used by institutional theory. Searching for the possible definitions of art, these authors have started from the procedure that was seen as a precondition for the possibility of proclaiming an artefact to be a work of art. Transposing this viewpoint from the evaluation of an object, institutional theory has introduced the notion of *status* as something acquired by the object which is a "candidate" for a work of art. For Danto, for example, it is enough that the object should be situated in the "art world" (art theory, art history) to be treated as a work of art. Dickie is somewhat more cautious and limits the accreditation for "performing" the procedure to artistic institutions, which function as any other social institution – through institutional practices. Božidar Kante has borrowed elements from both hypotheses: "A painting is an artwork because it hangs in a gallery (which is part of the art world), rather than hanging in a gallery because it is an artwork. In other words – and more in unison with Dickie's definitions – an object is an artwork if it is an artefact, and if someone who is authorized to do that owing to a position he or she has within the institution of the art world has assigned it the status of an artwork (by naming it, baptizing it, or honoured it as an artwork)."²⁰ The *modus operandi* of institutional art theory functions, therefore, on similar grounds as Austin's theory of the performative: just as with Austin the very utterance is an act, thus with the institutionalists the very placement of an artefact in a gallery is an artistic act; in other words, the placement of an artefact into a gallery assigns the status of artwork to that artefact. However, institutional theory – being so obsessed with the institutional framework of the "art world" – overlooks an important circumstance: if we look at the situation from the perspective of the "uninitiated" visitor of art institutions, the painting will "hang in the gallery" precisely *because it is a work of art*.

How does institutional theory influence the position of the "artist" and the rights or privileges that he or she (as an "artist") enjoys within the legal sphere? An answer to this question comes from the juridical nature of the performative: the fact that the court, as the juridical instance *par excellence*, needs help from another institution – and that is the art institution (or system) – to decide whether something is an artwork. Its experts, armed with the knowledge of art theory and art history, decide on what is or isn't art. On the other hand, the court is the instance that decides on who is authorized to judge (or argue) in questions related to art, since in such procedures only "legally licensed" experts are allowed to participate. Thus, regarding our discussion here, the institute of the "legally licensed expert in an artistic profession" is a handy supplementary institution that takes on the role of an intermediary between the autonomous spheres of law and art.

Institutional art theory emerged simultaneously with minimalism and conceptualism. Whereas the minimalists still needed some sort of artefact in order to speak of an "artwork", the conceptualists made it rather easy for themselves, since eventually a mere idea was sufficient to bring them on the art market. Thus, for example, Joseph Kosuth, one of the leading conceptualists, said that a claim is sufficient to make something art: "Art is the definition of art."²¹ Obviously, art has been captured in tautology, a framework imposed by itself, and has no ambitions to ever cross that framework. Morris Weitz has tried to break through that closed circuit with the help of the hypothesis that art is an "open term" and therefore a "stable" definition of art is impossible. Some conceptualists have used that "openness of the term" for extremely unusual and eccentric projects. Let us recall Jeff Koons, who no longer satisfied himself with *creating* artistic objects, but did that with the representatives of his own biological species: he proclaimed his own son to be a work of art. We also know

²⁰ Božidar Kante, *Filozofija umetnosti* [Philosophy of art] (Ljubljana: Založništvo Jutro, 2001), 48-49.

²¹ Cited in: Burman, 21. According to the author, it is not by chance that such tautological definitions of art emerged simultaneously with the birth of institutional art theory.

cases when artists were no longer satisfied with producing self-portraits in the form of paintings or sculptures, but proclaimed their own bodies to be works of art. An example of such “self-creation” is Ben Vautier, who exhibited himself in a London gallery in 1962, or Marko Pogačnik, who did something similar four years later at a gallery in Kranj. These cases were followed by numerous other examples of using one’s own body as an artistic/visual means of expression.

What Should We Do With “Artistic Immunity”?

The contemporary artist is thus caught in the network of a hyper-normative legal order, and every new regulation sticks a pole into the fence surrounding his artistic garden plot, simultaneously flattering him by acknowledging special rights intended for him alone, which we call relative (or functional) artistic immunity. Behind the fence of his garden plot, the artist can do whatever he or she wants, as long as that does not disturb other, neighbouring “gardeners”. But even if they are disturbed, the artist will refer to his or her artistic freedom, autonomy, and immunity. In the introduction to his book *Aesthetic Theory*, Adorno has written that “...absolute freedom in art, always limited to a particular, comes into contradiction with the perennial unfreedom of the whole.”²² Stallabrass adds: “As long as there is that broader non-freedom, individual freedoms will slip through our fingers like sand. Even though they may open up a utopian window towards a less instrumental world, they are also an efficient excuse for oppression.”²³ Would the contemporary artist, then, be able to take a radical step and renounce the privilege of artistic “immunity”, demanding in return equal rights for all, regarding the guild status?²⁴ The question is intriguing, but there are new paradoxes lurking behind the corner: the court would grant him or her that special right as an “artist” (just as it, for example, grants immunity to the parliamentary representative who does not appeal to it); and if the artist would resist and say that he is “not an artist”, that would probably annihilate the radical character of his gesture, since the practice because of which he would have to answer before the court would thus become a perfectly “ordinary”, “non-artistic”, “everyday” practice. And the end of art has been demanded and even proclaimed by many before him – so even that would be a futile repetition, just another empty gesture with a preserved hint of its former “radicality”.

In the modern, liberal bourgeois state, art is part of the body of human rights, which is why the legal sphere grants the “freedom of artistic creation” to the contemporary artist regardless of whether he or she is good or bad, rude or refined, conservative or progressive, political or apolitical, and so on. Appealing to the “freedom of artistic creation” is thus a pragmatic legal instrument by means of which “radical” artists and participants in artistic-activist practices can turn to their own benefit, if we cite Althusser, the only ideological apparatus of the state that is at the same time its repressive apparatus, and that is law. If we look at this problem from that perspective, we will find ourselves in the field of *tactics*, which is legitimate and can in many situations eventually be of vital importance for those who participate in these processes. However, a *strategic* question remains open: isn’t the “tactical” compliance with the prerogatives of the *repressive* organ also a concession, which acknowledges the legitimacy of that very *ideological* instance against which the spear of radical critique should be pointed?

22 Theodor Adorno, *Aesthetic Theory*, trans. Robert Hullot-Kentor (London and New York: Continuum, 1997), 1.

23 Julian Stallabrass, *Contemporary Art: A Very Short Introduction* (Oxford: Oxford University Press, 2006).

24 That the artist should feel at least a bit of remorse because of that privileged position in the civic legal and political system was already lamented by Rousseau: “The type of man foreshadowed by Rousseau (...) is no longer the philosopher, but what later came to be called the ‘artist’. His claim to privileged treatment is based on his sensitivity rather than on his wisdom, on his goodness or compassion rather than on his virtue. He admits the precarious character of his claim: he is a citizen with a bad conscience.” Leo Strauss, *Natural Right and History* (Chicago, IL: University of Chicago Press, 1953), 293.



Promišljanje umjetničke forme s pravnog gledišta

Judith Ickowicz

Prevela s francuskog Marina Miladinov

Suvremena umjetnost dovela je u pitanje ideju umjetnosti u tradicionalnom smislu riječi, kako u pogledu definicije umjetničkih djela koja se s njome povezuju, tako i u pogledu njihovih modusa proizvodnje. Tako se na polju umjetnosti pojavio pojam dematerijalizacije kao termin koji je sposoban obuhvatiti širok spektar umjetničkih praksi:⁰¹ umjesto odbacivanja ideje umjetničkog djela, on poziva na preispitivanje njegova odnosa prema formi, materijalu i kreativnom procesu u kojem je nastalo.

Stoga bismo trebali baciti nov pogled i na položaj umjetničkog djela s obzirom na pravo i još specifičnije – s obzirom na vlasništvo: na koji način umjetničko djelo kojemu nedostaje fizička osnova, ili je ta fizička osnova postala neizvjesna, može biti predmet prava na vlasništvo, i kako se provodi njegova akvizicija?

Ovdje je riječ o raznim vrstama umjetničkog izražavanja. Djela vezana uz pravac Arte Povera uključuju biljke i minerale različitih fizičkih potencijala, koji utječu na formu tih djela i na njezin razvoj. Iako nije formirala specifičan umjetnički pokret, konceptualna umjetnost šezdesetih godina 20. stoljeća okupila je različite umjetnike čija je zajednička crta bilo radikalno preispitivanje modaliteta postojanja umjetničkog djela i njegove proizvodnje. Tu nije bilo neke jedinstvene definicije, ali na tragu Duchampa sva su ta shvaćanja konceptualne umjetnosti ustrajala na središnjoj ulozi neke ideje ili koncepta, pa stoga i na sekundarnoj važnosti njihove materijalne aktualizacije. Body art predstavlja drugu dimenziju konceptualne umjetničke prakse, koja na radikalni način istražuje granice pojmova "umjetnik" i "umjetničko djelo", istodobno preispitujući granice osobne autonomije i stvaralačke slobode.

⁰¹ Lucy Lippard, *Six Years: the Dematerialization of the Art Object from 1966 to 1972* (Berkeley, CA: University of California Press, 1973.).

Danas je mobilizirana kreativna sposobnost pravnih postupaka. Pravo je tehnika koja određuje društvenu igru i način na koji se ona odvija: njezine sudionike i njihove međusobne odnose. Ono utječe na svoje referente, mijenjajući ih sebi svojstvenim sredstvima: pravilima, procedurama, konceptima i sustavima kategorija. Pravo osobito utječe na umjetničke prakse, a može ih i nadahnuti. Stoga nam pravo omogućuje da shvatimo način na koji se odnos umjetnika i umjetničkog djela konstruira na polju suvremene umjetnosti, kao i promjene u njezinu shvaćanju forme.⁰²

Dekonstrukcija pravnog poimanja umjetnika i umjetničkog djela

Budući da se ovdje želimo usredotočiti na umjetničko stvaralaštvo, logično je da ćemo najprije razmotriti zakon koji se odnosi na književno i umjetničko vlasništvo, i to francuski zakon, koji se po svome djelokrugu, doduše, ne odnosi specifično na umjetnost, ali mu je svrha zaštititi autore umjetničkih djela.

Međutim, primjena zakona o književnom i umjetničkom stvaralaštvu pretpostavlja prisutnost "umnog djela". Ta karakterizacija podložna je dvama uvjetima: kao prvo, djelo mora biti izvorno, a kao drugo, ono mora imati autonomnu formu. Njegovo glavno načelo ustvari je materijalno: samo je forma zaštićena, gotovo do isključenosti ideja. Ta doktrina smatra da forma mora biti dostupna osjetilima, što pretpostavlja fizičko utemeljenje. Taj zahtjev je pak osobito istaknut u domeni umjetnosti: pod umjetničkim djelom prvenstveno se podrazumijeva materijalni proizvod umjetnikovih ruku. Prisutnost ruke smatra se jamstvom individualne i jedinstvene proizvodnje, obilježene pečatom originalnosti. Umjetnička djela koja postoje u obliku protokola, pisanog ili usmenog, koji treba ostvariti neka treća strana – asistent, kolekcionar ili kustos – tako su u opasnosti da ih se klasificira kao nezaštićene ideje. Posljedica je da će se pretpostavljati kako je autor djela ta treća strana koja je sudjelovala u prijenosu djela u materijalni oblik, čak i ako je njezin kreativni doprinos bio od drugorazredne važnosti. I obrnuto, umni tvorac umjetničkog djela smatrat će se naprosto autorom nezaštićene ideje ili će mu u najboljem slučaju biti priznat status koautora zajedno s izvođačem.

Nema francuskog zakona koji bi se specifično odnosio na suvremenu umjetnost. Analiza nekih presuda na tom području otkriva da je poimanje forme sposobno prilagoditi se umjetničkim djelima koja se sastoje od ideja kada su te ideje utjelovljene u instalacijama *in situ*, kao što je bilo Christovo omatanje mosta Pont-Neuf.⁰³ Djelo *in situ* Jakoba Gautela koje se sastojalo od pozlaćenih slova, naslikanih tako da djeluju oronulo, koja su ispisivala riječ "Raj" iznad ulaza u nužnike u spavaonici liječenih alkoholičara u bolnici Ville-Evrard, također je zaštićeno.⁰⁴ Suci su, međutim, ustrajali⁰⁵ na tome da se postojanje forme može utvrditi kao rezultat "materijalne aktualizacije" utjelovljene u tipologiji slova, njihovoj ručnoj izradi u zlatnoj boji i izboru mjesta za njihovo ispisivanje. Međutim, u odluci nazvanoj *Infopaq* od 16. srpnja 2009.⁰⁶ Sud Europske Zajednice predložio je pravosudnu definiciju izvornosti koja će se primjenjivati u čitavoj EU, a koja potiče radikalniji razvoj. Europski sud izjavio je kako se produkcija može smatrati originalnom u smislu "umnog stvaralaštva" njezina autora bez ikakvog daljnjeg uvjeta.

Francusko ugovorno pravo⁰⁷ odaje jednaku posvećenost "ruci" umjetnika. Francuski Vrhovni sud poništio je aukcijsku prodaju slike-zamke Daniela Spoerrija na osnovi Dekreta br. 81-255 od 3. ožujka 1981. o suzbijanju

02 O ovom pitanju u cijelosti vidi moju knjigu *Le droit après la dématérialisation de l'œuvre d'art* (Dijon, Les presses du réel, collection "Figures", 2013.).

03 CA Pariz, 13 ožujka 1986., *Gazette du Palais* (1986.), 1, str. 238.

04 Édouard Treppoz, "'La nouvelle Ève' au 'paradis' du droit d'auteur: suite et fin!", *Dalloz* (2009.), *Chronique*, str. 266.

05 CA Pariz, 28. lipnja 2006., *Revue Lamy Droit de l'Immatériel* (rujan 2006.), br. 558, str. 8, opaske Nadije Walravens.

06 CJCE (današnji CUJE), 16. srpnja 2009., *Infopaq c. Danske Dagblades Forening*, aff. C-5/08, *La semaine juridique, Édition générale* (2010.), br. 30, 1691, *Chronique de jurisprudence*, opaske Henri-Jacquesa Lucasa, br. 12.

07 Što se tiče francuskog fiskalnog zakona, objavljen je niz mjera u prilog umjetničkim djelima. Fiskalna definicija umjetničkog djela, međutim, obuhvaća "slike, kolaže i slične dekorativne radove, platna i crteže koji u potpunosti potječu od umjetnikove ruke" (Član 98 A II Aneksa 3 uz Opći porezni zakon). Slične definicije postoje u mnogim zakonodavnim sustavima, uključujući američke i europske zakone.

prijevara u transakcijama vezanim uz umjetnost i kolekcionarske predmete, uz objašnjenje da se Daniel Spoerri lažno predstavljao kao autor umjetničkog djela. Slika-zamka nastala je 1972. godine, prigodom izložbe koja se sastojala od obroka nakon kojega su stolovi koje je Spoerri odabrao potpisani i autorizirani, uključujući stol jedanaestogodišnjeg dječaka Guya Mazarguila. Vrhovni sud⁰⁸ obznanio je da je *“stvarni autor onaj koji je osobno proizveo ili izradio umjetničko djelo ili predmet, što je temeljni preduvjet za njegovu autentičnost u okviru javne aukcije.”*

U svjetlu ovog iskaza čini se da francuski zakon gleda na umjetničko djelo prvenstveno kao na materijalan i statičan predmet. Međutim, suvremena umjetnost prisiljava ga da preispita svoj pristup.

Usvajanje umnog koncepta za stvaranje i redefiniciju pojma forme

Umjetnička djela za koja je fizičko utemeljenje postalo sekundarno posjeduju formu na isti način kao i ona koja imaju takvo utemeljenje, samo što je njihova forma umne naravi. Ona se mogu smatrati predmetima koje je moguće kupiti, ali uz uvjet da se usvoji izmijenjena definicija forme.

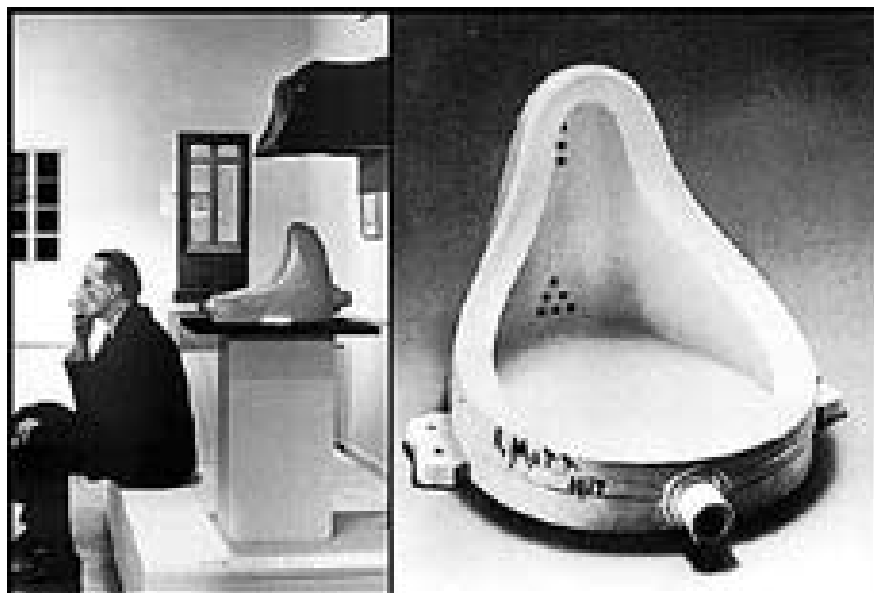
Ready-made bi se mogao smatrati dobrim polazištem u tom pitanju. Izumom ready-madea Duchamp je potaknuo revoluciju tako što je pridao značenje industrijski proizvedenom predmetu, a da ga nije izmijenio, naime pukom apropiacijom. Ready-made postiže promjenu destinacije u predmetu, i to predmetu koji je izvorno utilitarne naravi, ali se transformira u umjetničko djelo i kao takav se upisuje u domenu umjetnosti. U sasvim temeljnom smislu – kao jednostavan predmet pretvoren u umjetničko djelo – ready-made se svodi na ideju koja se ne može autorski zaštititi: pravo na književno i umjetničko vlasništvo obuhvaća ready-made isključivo u izložbenom kontekstu, kao dio veće cjeline. On se svodi na osjetilno spoznatljivu stvarnost, što je jedini način da se zadovolje uvjeti forme koji mu se nameću.

Koristeći se tehnikom specifikacije, bavljenje ready-madeom u domeni vlasničkog prava dopušta nam da obogatimo svoje promišljanje o formi. Ova nam tehnika dopušta da preciziramo temelje definicije nekog predmeta: on se može definirati na osnovi svoje forme ili materijala ondje gdje on postoji, ali čini se da vlasničko pravo materijalu daje prednost. Takvu shemu valja obrnuti: moramo krenuti od definiranja predmeta, a time i umjetničkog djela, na osnovi njegove forme. Tada će biti moguće objasniti da se neka nova stvar, na primjer ready-made, može stvoriti uporabom stare stvari, a da se pritom ne promijeni njezin izgled niti uzrokuje bilo kakva vrsta materijalne promjene. Umjetničko djelo definira se na osnovi forme, a forma ready-madea nužno je umna, budući da nas jedino umna operacija ovlašćuje da interveniramo u status predmeta i na taj način stvorimo umjetničko djelo. Radikaliziramo li taj umni pristup stvaralaštvu, moći ćemo se osloniti na načelo organizacije kao na jedinu osnovu za umjetničko djelo.

U tom pogledu ugovor zauzima središnje mjesto u domeni suvremene umjetnosti, a njegovu važnost zorno prikazuju brojni primjeri (Philippe Thomas, Yves Klein, Daniel Buren, Claude Rutault, Lawrence Weiner, Sol LeWitt⁰⁹...). Iz ugovora možemo izvesti načelo koje upravlja umjetničkim djelom unutar njegova konteksta, kao i uloge različitih aktera u stvaralačkom procesu, osobito u slučaju delegiranja rada tijekom njegove izvedbe. Iako nužno ne odgovara pravnim zahtjevima u pogledu književnog i umjetničkog vlasništva, niti ima koristi od opsega zaštite koji je s njime povezan,

⁰⁸ Cass. civ. 1^{re}, 15. studenog 2005., *Revue Lamy Droit de l'Immatériel* (travanj 2006.), br. 15, str. 6, opaske Jean-Marca Bruguièrea; *La Semaine juridique, Édition générale* (2006.), II, 10092, opaske Judith Ickowicz.

⁰⁹ Ove primjere prikazala sam u drugoj knjizi, *Le droit après la dématérialisation de l'œuvre d'art* (nav. djelo), gdje sam uvrstila analizu umjetničkih strategija Tina Sehgal i Oliviera Bardina koje ovdje spominjem.



Marcel Duchamp, *Fountain*, 1917.

umjetnička forma se na osnovi takve organizacije može osloniti na normativni umjetnički kontekst i sudjelovati u pravnim transakcijama.

Umna forma podložna umjetnikovu autoritetu

Pravo vlasništva nad umjetničkim djelom također zahtijeva da se njegov autor jasno identificira, što podrazumijeva redefiniciju pravne ideje autorstva na više osnova.

Mogućnost delegiranja rada tijekom izvedbe obvezuje nas da razjasnimo autorovo mjesto i povučemo granicu između onih izvedbenih činova koji svjedoče o kreativnom doprinosu i onih koji proizlaze iz "umjetničke subordinacije". Tu moramo primijeniti nekoliko kriterija. Umjetnik mora unilateralno odrediti uvjete proizvodnje umjetničkog djela. Pritom može dati smjernice, nadzirati provedbu i sankcionirati greške izvođača tako što će odbiti autorizirati materijalnu formaciju ako se pokaže da nije u skladu s njegovim željama. U tom slučaju nije dovoljno opisati umjetničko djelo apstraktno, nego treba izraditi kontekst produkcije koji će pridonijeti njegovoj definiciji na osnovi ugovornog modela.

Usporedba s plesnim predstavama pokazuje da se status autora pripisuje koreografu, a ne izvođaču. Pravna povijest plesa otkriva da se model umjetničkog djela koje je autor u potpunosti zabilježio i ostvario proširio tako da obuhvaća i koreografsko djelo. Tek su s Članom 3, 4° od 11. ožujka 1957. (današnji Član L.112-2, 4° Zakona o intelektualnom vlasništvu) koreografija i pantomima ostvarile status umnih djela za sebe, pod uvjetom da su zabilježena pismeno ili na neki drugi način.¹⁰ To bilježenje može se provesti u obliku pismene notacije ili audiovizualne snimke. Zaštita koreografskog djela zakonom o književnom i umjetničkom vlasništvu samo zahtijeva da njegova forma bude prepoznatljiva, bez obzira na okolnosti njegove izvedbe: mora biti moguće izolirati koreografov doprinos od izvođačeva, čak i po cijenu simplifikacije stvaralačkog procesa.¹¹ Razrada i transmisija koreografskog djela mogu se oslanjati čak i na angažman izvođača, kojemu se teoretski može pripisati status autora zajedno s koreografom. Utjelovljujući koreografsko

¹⁰ Ovaj zahtjev nalazimo već u Članu L. 112-2 4° Zakona o intelektualnom vlasništvu. Uz dopunu od 3. srpnja 1985. ovaj tekst trenutno glasi: "Aktualni zakon među djela uma ubraja: [...] koreografska djela, cirkuske točke i pantomime, pod uvjetom da je predstava zabilježena pismeno ili drugačije." Određeni spektakli uživo tako su uključeni u sferu pravne zaštite iako rad na pripremi zakona otkriva strahovanje da bi se ta zaštita mogla na kraju proširiti na tjelesne izraze koji nemaju nikakve veze s kazalištem.

¹¹ Frédéric Pouillaude, *Le désœuvrement chorégraphique. Étude sur la notion d'œuvre en danse* (Pariz: Librairie philosophique J. Vrin, 2009.), str. 207. To objašnjava zbog čega je ples, unatoč činjenici da sustavi bilježenja postoje u više ili manje razrađenom obliku još od 18. stoljeća, ostao temeljno usmena umjetnost, što čini očuvanje i prijenos djela prilično neizvjesnim. Prijenos je u osnovi neposredan i koreografska djela dugo su bila višeautorska, kao i usmena. Ta se situacija promijenila krajem 19. stoljeća.

djelo, on ga može prožeti svojom osobnošću i unijeti varijacije u njegovu izvedbu koje ga obogaćuju od jedne predstave do druge. Međutim, to nije rješenje koje se obično preferira: iako zakon ne ignorira izvođača, on je zaštićen posebnim statusom, onime umjetnika-interpretatora.

Umjetnička djela na razmeđi umjetničkog predmeta i izvedbe ili odnosa: slučajevi Oliviera Bardina i Tina Sehgal

Neki umjetnici poželjeli su proširiti model umjetničkog predmeta i dalje, kako bi uključivao i predstave ili odnos s publikom, te integrirati te procese u ekonomiju umjetnosti. Forma koja je pogodna za akviziciju i kojoj se može pridati neka vrijednost trebala bi stoga biti prepoznatljiva. Međutim, pravna tehnika dopušta razlučivanje takve forme čak i onda kada se čini da umjetničko djelo pripada prvenstveno izvedbenoj ili iskustvenoj domeni. Prisjetimo se rada Oliviera Bardina i Tina Sehgal, čiji nam radikalizam dopušta da pojasnimo ovu hipotezu.

Tino Sehgal stvara komade koji uključuju ples, pjevanje i govor, a koji su smješteni na razmeđi konceptualne umjetnosti i performansa. Pritom je poželio isključiti bilo kakav opipljivi trag i nametnuti kolekcionarima isključivo usmeni prodajni ugovor. Sporazum je ipak sklopljen pred javnim bilježnikom i u prisutnosti dvaju svjedoka. U ovom slučaju intervencija bilježnika nije bila odgovor na pravne zahtjeve, nego je pridonijela teatralizaciji postupaka koji su okruživali postojanje tog umjetničkog djela, kao i njegovu upisivanju među stvaralačke procese. Prodani komad sastojao se od usmenog protokola koji je definirao njegove radnje ili izvedbe koje će provesti jedan ili više interpretatora. Njegov je sadržaj bio verbalno iskazan: okolnosti njegove izvedbe, njezino trajanje i broj potrebnih interpretatora. Budući da ne postoji baš nikakav zapis, aktualizacija tog komada nužno je zahtijevala pamćenje. Vlasnik djela morao je stvoriti mentalnu reprezentaciju kako bi je kasnije mogao prenijeti izvođačima ili budućim kupcima. Čak i ako pitanje pamćenja performansa nije isključivo vezano uz rad Tina Sehgal, ono ovdje dobiva jedinstven značaj zahvaljujući odsutnosti arhiva koji bi omogućio da se identificira neki stabilan *corpus* bez obzira na varijacije tijekom njegove izvedbe.

U radu Oliviera Bardina¹² odnos se gradi s jednim ili više gledatelja. On je izumio metode koje mu omogućuju da istraži intersubjektne okvire u kojima se uspostavlja slika neke osobe. Onako kako je on shvaća, slika je nešto poput vizualnog identiteta subjekta. Njegove metode nude gledateljima mogućnost da prožive umjetničko iskustvo na temelju tjelesne i emocionalne uključenosti: poziva ih se da postanu izložbeni predmeti u koje će gledati umjetnik i drugi gledatelji, ali i da upere svoj pogled kada se nađu suočeni s njima, u jednakopravnoj razmjeni uloga. *Ce qui s'expose te ressemble* naslov je ciklusa od četiri izložbe koji se odvio 2007. i 2008. godine u Međunarodnom centru za umjetnost i pejzaž na otoku Vassivière. Svaka izložba trajala je dva sata u praznom prostoru umjetničkog centra, sa skupinama od pet do pedeset gledatelja, već prema okolnostima. Tijekom performansa *You Belong to me / belong to you*, koji je nastao u Ženevi 2008. godine, umjetnik je primio šesnaest osoba koje su se našle direktno suočene s njim u praznom izložbenom prostoru. Započeo bi susret sljedećom izjavom: "*Mogu činiti s vama što god poželim svojim pogledom, a isto vrijedi i za vas, možete činiti sa mnom što god poželite.*" Trajanje izložbe ovisilo je o želji dvoje protagonista.¹³

¹² O djelu Oliviera Bardina vidi njegovu monografiju: Olivier Bardin, *Expositions* (Pariz, Mix. éditions, 2011.).

¹³ Fotografije snimljene ovom prigodom objavio je i izložio Centre d'édition contemporaine u Ženevi. Izdanje uključuje 64 fotografije u boji dimenzija 22 x 30 cm, izložene između dviju akrilnih ploča, prozirne sprijeda i neprozirne straga.

Olivier Bardin proizveo je *statement* koji je dovoljno fleksibilan da dopusti razvoj takvih iskustava u različitim smjerovima, ovisno o kontekstu, bilo s njim samim, bilo s trećom stranom koju bi imenovao, ali uvijek prema istim principima. Njegov *statement* sastoji se od šest fiksni elemenata: 1) Mjesto; 2) Gledatelj; 3) Prisutnost umjetnika ili njegova predstavnika; 4) Inauguralna deklaracija, koju izgovaraju on ili njegov predstavnik na jeziku zemlje u kojoj se izložba odvija; deklaracija je vezana uz želju za razotkrivanjem sebe i može varirati prema kontekstu; 5) Trajanje, koje određuje oboje sudionika; 6) Naposljetku, naprave za audiovizualno snimanje.

Njegovi komadi mogu postati predmetom prodajnog ugovora, gdje će se predmet sastojati u pravu na aktiviranje plana i na predstavljanje njegove aktualizacije kao "izložbe osobe" Olivera Bardina. Oni ustvari pokazuju svojstva umne forme kako smo je ranije definirali: iako se oslanjaju na određenu organizaciju koja im pridaje autonomnost predmeta koji se može prisvojiti, te stoga mogu biti uključeni i u pravne transakcije, čini se prilično diskutabilnim pripadaju li domeni književnog i umjetničkog vlasništva, budući da bi se uvjet postojanja forme kakav zahtijeva taj specifični zakon mogao smatrati neispunjenim. Umjetnička strategija Oliviera Bardina uključuje prijenos prava nad slikom, organiziran prije početka izložbe, što podrazumijeva mogućnost korištenja fotografija snimljenih tom prigodom u njegovu umjetničkom radu. Za volju "jednakosti" u korištenju pogleda i odricanju od prava nad slikom, autor je autorizirao prisutne gledatelje da također fotografiraju i raspolažu fotografijama po vlastitu nahođenju. Tako se pravo pokazuje sposobnim pratiti nastanak vrlo različitih umjetničkih formi.

Tijelo kao osnova i materijal za umjetničko djelo

Kad umjetnik vlastitom tijelu dodijeli status umjetničkog djela, klasični parametri umjetnosti dovedeni su do krajnjih granica. Pribjegavanje pravu pomaže nam da razlikujemo tijelo kao umjetnički medij od tijela koje se poistovjećuje s ljudskim bićem, a time i da identificiramo umjetničko djelo. Ustvari, postoje dva pravna pristupa tijelu, koja odgovaraju poimanju osobe: s jedne strane, tu je "pravna osoba", a s druge ljudska. "Pravna osoba" je funkcionalan koncept. Ona ne označava ljudsko biće, nego apstraktan entitet koji služi kao osnova za uspostavu pravnih odnosa: ono je artefakt, pravna fikcija. Ta "osoba" ipak ne može sudjelovati u pravnim transakcijama ako nema neku stvarnu osnovu. Ona ne može biti puka forma. Ljudska osoba odgovara upravo toj supstancijalnoj stvarnosti. Zabranjeno je sve što bi moglo dovesti u pitanje njezinu funkciju osnove, ali u svakom drugom pogledu se odvojivi dijelovi tijela – elementi i proizvodi ljudskog tijela, sve osim ljudskog tijela u cijelosti – u teoriji mogu smatrati predmetom. Kategorija "pravne osobe" stoga nam dopušta da promatramo tijelo kao nešto drugačije od ljudske osobe, budući da je kroz nju ostvareno konceptualno razdvajanje subjekta i objekta prava.

Bioetički zakoni od 29. srpnja 1994. – revidirani i dopunjeni zakonom od 6. kolovoza 2004. – prvi put su uspostavili ljudsko tijelo kao autonomnu pravnu kategoriju koju treba zaštititi. Međutim, zakon iz 1994. ne pridaje pravnu vrijednost samo tjelesnom supstratu osobe: jedinstvo tog supstrata doslovce je izgubljeno. Zakon govori o organima, tkivu, tjelesnim proizvodima, embrijima, krvi i djelovanju koje je relevantno za sve te različite i razdvojene elemente "kao da tijelo osobe za koju se to tijelo čuva nije ništa drugo do provizorna organizacija prolaznih elemenata, sklop koji neće trajati

*duže od jednog pokreta i koji nas prisiljava da modificiramo svoje trenutno shvaćanje prirodnoga i artefakta.*¹⁴

Umjetnici kao što je Orlan poigravaju se tim polaritetima koje je razotkrio zakon, iako ostaju u granicama zakonitoga. Orlan je pretvorila svoje tijelo u osnovu i materijal za svoju umjetničku praksu. Između 1990. i 1993. prošla je devet operacija kako bi modificirala svoje crte u skladu s raznim modelima koje je birala prema njihovu mitskom karakteru (*Mona Lisa*, Psiha, Boticellijeva *Venera*, Sotona). Svaka od tih operacija bila je zamišljena kao performans te dokumentirana na filmu i fotografijama. To istraživanje granica ljepote odvijalo se uz preispitivanje bioloških zakona koji upravljaju formom ljudskog tijela. Orlan se zanima za biotehnologije, osobito za kulture kože, te redovito raspravlja sa znanstvenicima i liječnicima. Planira prikupiti stanice svoje kože i dati da se od njih napravi hibrid sa stanicama osoba tamne boje kože. Te stanice zatim će se uzgajati u laboratoriju kako bi se steklo dovoljno građe za izradu kaputa. Ona smatra da na taj način stječe kontrolu nad definicijom svoga tijela i njegova identiteta. Preispituje krajnosti ideje tijela kao artefakta te istražuje granice identiteta, kojima se bavi i većina aktualnih pravnih debata.

Svi navedeni primjeri ističu doprinos prava umjetničkoj sferi. Pravo se nameće kao *corpus* koji bi trebalo uzeti u obzir želimo li pojmiti sve implikacije suvremenih umjetničkih formi te razmotriti samu ideju forme iz drugačijeg ugla.

¹⁴ Yan Thomas, "Le sujet de droit, la personne et la nature. Sur la critique contemporaine du sujet de droit", *Le Débat* 100 (svibanj-kolovoz 1998.)

Photo: Harry Shunk



Prijenos djela Nematerijalne zone slikovne osjetljivosti na Michaela Blankforta u Parizu, 10. veljače 1962.

Transfer of a Zone of Immaterial Pictorial Sensitivity to Michael Blankfort, Paris, February 10, 1962.
Photo: Harry Shunk



Ček izdan kao potvrda o kupnji djela Nematerijalne zone slikovne osjetljivosti

A cheque used to certify the purchase of a Zone of Immaterial Pictorial Sensitivity.

**OBRED PRIJENOSA
NEMATERIJALNIH ZONA
SLIKOVNE OSJETLJIVOSTI
1957.-1959.**

Nematerijalne zone slikovne osjetljivosti Yvesa KLEINA prenose se na kupca u zamjenu za određenu količinu čistog zlata. Sedam serija ovih slikovnih nematerijalnih zona, označenih rednim brojevima, već postoji. Za svaku prenesenu zonu izdaje se potvrda. Na potvrdama je navedena točna težina čistog zlata, koja predstavlja materijalnu vrijednost koja odgovara primljenoj nematerijalnoj vrijednosti. Vlasnik može dalje prenositi zone. (Vidi pravila na pojedinačnim potvrdama.)

Svaki potencijalni kupac nematerijalne zone slikovne osjetljivosti mora biti svjestan toga da njegovo prihvaćanje potvrde za cijenu koju je platio oduzima djelu svu autentičnu nematerijalnu vrijednost, iako je ono u njegovu posjedu. Kako bi temeljna nematerijalna vrijednost zone pripala kupcu i postala dio njega, on mora svečano spaliti svoju potvrdu nakon što je upisao svoje ime, prezime, adresu i datum kupnje u knjigu računa.

U slučaju da kupac želi da dođe do takvog čina integracije umjetničkog djela i njega samoga, Yves Klein mora u prisutnosti direktora galerije umjetnina, stručnjaka iz galerije umjetnina ili umjetničkog kritičara, u prisutnosti dvaju svjedoka, baciti polovicu zlata koje je primio u ocean, rijeku ili na neko drugo mjesto u prirodi gdje to zlato nitko neće moći prisvojiti.

Od ovog trenutka nematerijalna zona slikovne osjetljivosti apsolutno i neodvojivo pripada kupcu.

Budući da je zona prenesena na ovaj način, vlasnik je više ne može prenijeti na treću osobu.

Y.K.

**RITUAL FOR THE RELINQUISHMENT
OF THE IMMATERIAL PICTORIAL
SENSITIVITY ZONES
1957-1959**

The immaterial pictorial sensitivity zones of Yves KLEIN are relinquished against a certain weight of fine gold. Seven series of these pictorial immaterial zones all numbered exist already. For each zone relinquished a receipt is given. This receipt indicates the exact weight of pure gold which is the material value correspondent to the immaterial acquired. The zones are transferable by their owner. (See rules on each receipt).

Every possible buyer of an immaterial pictorial sensitivity zone must realize the fact that he accepts a receipt for the price which he has paid takes away all authentic immaterial value from the work, although it is in his possession. In order that the fundamental immaterial value of the zone belongs to him and becomes a part of him, he must solemnly burn his receipt, after his first name and last name, his address and the date of the purchase have been written on the stub of the receipt book.

In case the buyer wishes this act of integration of the work of art with himself to take place, Yves Klein must, in the presence of an Art Museum Director, or an Art Gallery Expert, or an Art Critic, plus two witnesses, throw half of the gold received in the ocean, into a river or in some place in nature where this gold cannot be retrieved by anyone.

From this moment on, the immaterial pictorial sensitivity zone belongs to the buyer absolutely and intrinsically.

The zone having been relinquished in this way are then not any more transferable by their owner.

Y.K.

Rethinking the Art Form from a Legal Perspective

Judith Ickowicz

Translated from French by Marina Miladinov

Contemporary art has been a challenge to the fine arts in the traditional sense of the term, questioning both the definition of artworks generally associated with them and their modes of production. Thus, the notion of dematerialization has emerged in the field of art as a classification term capable of covering a wide range of art practices:⁰¹ instead of dismissing the idea of an artistic object, it calls for a re-examination of its relation to the form, material, and the creative process from which it has derived.

Thus, one should take a fresh look at the position of the artwork with regard to law and, more specifically, with regard to property: in what way does a work of art that lacks a physical foundation, or its physical foundation has become uncertain, remain subject to property rights, and how is its acquisition actualized?

We are concerned here with various forms of artistic expression. Artworks associated with Arte Povera include plants and minerals with their specific physical potentials, which influence their form and its evolution. Without constituting a specific artistic movement, the “conceptual art” of the 1960s brought together various artists whose common trait was that they were radically rethinking the existential modalities of both the artwork and its production. There was no unified definition, but in the wake of Duchamp all these understandings of conceptual art insisted on the predominance of an idea or a concept, and therefore on the secondary nature of its material actualization. Body art represents another dimension of contemporary art practice, which explores the limits of the notions of artist and artwork in a radical manner, questioning at the same time the boundaries of personal autonomy and freedom of creation.

⁰¹ Lucy Lippard, *Six Years: The Dematerialization of the Art Object from 1966 to 1972* (Berkeley, CA: University of California Press, 1973).

The creative capacity of legal procedures has been mobilized. Law is a technique that marks the social game and its operations: its agents and the relationships between them. It acts upon its referents, transforming them with its tools: rules, procedures, concepts, and systems of categories. It especially influences art practices, and can also inspire them. Therefore, law allows us to grasp the way in which the relationship between artist and artwork is constructed in the field of contemporary art, as well as changes in the understanding of form.⁰²

Deconstructing the legal notions of artist and artwork

Since our aim here is to focus on artistic creation, it is only logical that we should first examine law as related to literary and artistic property, namely French law, which, even if not strictly centred on art in its scope, is nevertheless intended to protect the authors of artworks.

The implementation of law on literary and artistic property presupposes, however, a presence of a “work of the mind”. This qualification is subject to two conditions: on the one hand, the artwork must be original, while on the other it must possess an autonomous form. Its main principle is actually material: only the form is protected, even to the exclusion of ideas. The doctrine asserts that the form must be perceptible to the senses, which presupposes a physical anchorage. Now, this requirement is particularly notable in the sphere of art: a work of art is first and foremost understood as a material product of the artist’s hands. The presence of the hand is seen as a guarantee of individual and singular production, stamped by the seal of originality. Works of art that exist in the form of a protocol, written or oral, to be executed by a third party – an assistant, a collector, or a curator – thus risk to be classified among ideas that are not protected. Consequently, the third party that participates in the transposition of the artwork into a material form will be presumed its author, even if his or her creative contribution is of secondary importance. And vice versa, the intellectual designer of an artwork will be viewed simply as the author of a non-protected idea or will at best be acknowledged the status of a co-author along with the executor.

There is no French legislation that would specifically focus on contemporary art. A review of some legal decisions in this field shows that the notion of form is capable of adapting itself to artworks that consist of ideas when they are embodied in installations *in situ*, such as the wrapping up of Pont-Neuf by Christo.⁰³ An artwork *in situ* by Jakob Gautel, which consists of gilded letters painted with a worn effect and spelling out the word “Paradise” above the toilet doors in an old dormitory for alcoholic patients at the hospital of Ville-Evrard, has been likewise protected.⁰⁴ The judges, however, insisted⁰⁵ on establishing the existence of a form as resulting from a “material actualization” embodied in the typology of letters, their manual execution in golden paint, and the choice of site for their inscription. However, in its decision called *Infopaq*, dated July 16, 2009,⁰⁶ the Court of Justice of the European Community proposed a judicial definition of originality to be applied in all of EU, which encourages a more radical development. The European Court has declared that a production can be considered original in the sense of being “an intellectual creation” of its author without any further requirement.

02 On this issue as a whole, see my book *Le droit après la dématérialisation de l'œuvre d'art* (Dijon, Les presses du réel, collection “Figures”, 2013).

03 CA Paris (March 13, 1986), *Gazette du Palais* (1986), 1, p. 238.

04 Édouard Treppoz, “La nouvelle Ève’ au ‘paradis’ du droit d’auteur: suite et fin!”, *Dalloz* (2009), *Chronique*, p. 266.

05 CA Paris (June 28, 2006), *Revue Lamy Droit de l’Immatériel* (September 2006), no. 558, p. 8, remarks by Nadia Walravens.

06 CJCE (today’s CJUE), July 16, 2009, *Infopaq c. Danske Dagblades Forening*, aff. C-5/08, *La semaine juridique*, Édition générale (2010), no. 30, 1691, *Chronique de jurisprudence*, observations by Henri-Jacques Lucas, no. 12.

French contract law⁰⁷ reveals an equal commitment to the “hand” of the artist. The auction sale of a snare-picture by Daniel Spoerri was annulled by the Court of Cassation based on the basis of Decree No. 81-255 of March 3, 1981 on the suppression of frauds in transactions related to art and collector’s objects, with the explanation that Daniel Spoerri was falsely presenting himself as the author of the artwork. The snare-picture was made in 1972, on the occasion of an exhibition consisting of a meal, after which tables selected by Spoerri were signed and authenticated, including that of Guy Mazarguil, an eleven-year old boy. The Court of Cassation⁰⁸ proclaimed that *“The actual author is the one who has personally produced or actualized an artwork or an object, which is the essential condition of its authenticity in the framework of a public auction.”*

In light of this statement, it appears that French law primarily sees the work of art as a material and static object. However, contemporary art is forcing it to revise this approach.

Adopting an intellectual concept for the creation and redefinition of the notion of form

Works of art for which a physical basis has become secondary in importance possess a form in the same way as those which possess such a basis, only that their form is intellectual. They could be considered as objects that can be acquired, under the condition that a revised definition of form should be adopted.

Ready-mades could be taken as a point of departure in this matter. With the invention of the ready-made, Duchamp accomplished a revolution by adding meaning to a manufactured object without modifying it, merely by appropriating it. The ready-made effects a change of destination in an object: an object that is utilitarian by origin is transformed into an artwork, inscribed as such into the field of art. In its crudest sense – as a simple object transformed into a work of art – the ready-made is reduced to an idea that cannot be copyrighted: the right to literary and artistic property covers the ready-made exclusively in the context of an exhibition, as an element of a larger whole. It is reduced to a perceptible reality, which is the only way of meeting the requirement of form that has been imposed upon it.

Addressing the ready-made in the domain of property law, by using the technique of specification, allows us to enrich our reflection on form. This technique allows us to pin down the foundations of the definition of an object: it can be defined on the basis of its form or material where it is provided, but property law seems to give preference to the material. This scheme must be reversed: we must begin by defining the object, and therefore also the artwork, on the basis of its form. Then it will be possible to explain that a new thing, for example a ready-made, can be created by using an old thing, without modifying its appearance or causing any sort of material change. The work of art is defined on the basis of its form, and the form of a ready-made is necessarily intellectual, because only an intellectual operation authorizes us to produce a break in the status of an object, and consequently to give birth to a work of art. If we radicalize the intellectual approach to creation, we can rely on the principle of organization alone as the basis of an artwork.

⁰⁷ As for French fiscal law, it has issued a series of measures in favour of artworks. The fiscal definition of an artwork includes, however, “pictures, collages, and similar decorative plaques, paintings, and drawings entirely produced by the artist’s hand” (Art. 98 A II of Annex 3 to the General Tax Code). Similar dispositions exist in many legislations, including American and European law.

⁰⁸ Cass. civ. 1^{re} (November 15, 2005), *Revue Lamy Droit de l’Immatériel* (April 2006), no. 15, p. 6, remarks by Jean-Marc Bruguière; *La Semaine juridique, Édition générale* (2006), II, 10092, remarks by Judith Ickowicz.

In this respect, the contract occupies a central place in the field of contemporary art, and its importance can be illustrated by numerous examples (Philippe Thomas, Yves Klein, Daniel Buren, Claude Rutault, Lawrence Weiner, Sol LeWitt⁰⁹...). From the contract one can infer the principle that governs the artwork within its context and the roles of different agents in the process of creation, particularly in case of delegation in its execution. Without necessarily responding to the legal requirements concerning literary and artistic property, or benefiting from the scope of protection associated with it, an art form can thus rely on a normative artistic setting and enter into legal transactions on the basis of this organization.

Intellectual form subjected to the artist's authority

Property claims over a work of art also require that its author should be clearly identified, which involves a redefinition of the legal idea of authorship on various bases.

The possibility of delegation within the execution obliges us to clarify the author's place and to trace the boundary between those acts of execution which testify of a creative input and those that result from "artistic subordination". Several criteria must be deployed here. The artist must unilaterally set the conditions for producing the artwork. He can provide the guidelines, control the execution, and sanction the mistakes of the executor by refusing to authenticate the material formation if it turns out contrary to his wishes. In this case, it is not sufficient to describe the artwork in abstract terms; a production setting is invented that contributes to its definition on the basis of the contractual model.

A comparison with dance shows that the status of author is assigned to the choreographer rather than the interpreter. The legal history of dance reveals that the model of an artwork that is noted down in its entirety and accomplished by the author has been extended to include the work of choreography. It was not until Article 3, 4° of March 11, 1957 (today's Article L.112-2, 4° of the Intellectual Property Act) that choreography and pantomime achieved the status of works of the mind in their own right, on the condition that they are noted down in writing or otherwise.¹⁰ This noting down can be done by means of written notation or as an audiovisual recording. Protection of choreographic work by the law on literary and artistic property only requires that its form should be identifiable regardless of its conditions of execution: it must be possible to isolate the choreographer's contribution from that of the interpreter, even at the cost of simplifying the creative process.¹¹ The elaboration and transmission of a choreographic work may, in fact, rely on the involvement of an interpreter, who can in theory be assigned the status of author together with the choreographer. When embodying the work of choreography, he can endow it with his personality and introduce variations in its execution that enrich it from one performance to another. Nevertheless, this is not the commonly preferred solution: although the interpreter is not ignored by the law, he is protected by a special status, that of the artist-interpreter.

⁰⁹ These examples have been elaborated in another work, *Le droit après la dématérialisation de l'œuvre d'art* (op. cit.), which offers an analysis of the artistic devices of Tino Sehgal and Olivier Bardin mentioned below.

¹⁰ This requirement is found already in Article L. 112-2 4° of the Law on Intellectual Property. Complemented by the law of July 3, 1985, the text currently states that: "The actual law understands as works of the mind: [...] choreographic works, circus acts, pantomimes, where the performance is fixed in writing or otherwise." Certain live spectacles have thus been included in the sphere of legal protection, although the preparatory work on the law reveals fear that this protection might end up extended to corporal expressions that do not belong to theatre.

¹¹ Frédéric Pouillaude, *Le désœuvrement chorégraphique. Étude sur la notion d'œuvre en danse* (Paris: Librairie philosophique J. Vrin, 2009), p. 207. This explains why, despite the fact that notation systems have existed in a more or less elaborated form since the 18th century, dance has remained a fundamentally oral art, making the conservation and transmission of works rather uncertain. The transmission is essentially direct and the work of choreography was for a long time produced as a plural work, just like oral works. This situation changed in the late 19th century.

Artworks on the borderline between an art object and performance or relationship: The cases of Olivier Bardin and Tino Sehgal

Some artists want to extend the model of the art object even further, to include performances or relationship with the audience, and to integrate these processes into the economy of art. A form that is suitable for acquisition and to which a value can be attached should therefore be identifiable. However, the legal technique allows for the discernment of such a form even when the artwork seems to belong primarily to a performative or experiential domain. Let us recall the work of Olivier Bardin and Tino Sehgal, the radicalism of which allows us to clarify this hypothesis.

Tino Sehgal designs pieces that involve dance, singing, and speech, and which are situated on the crossroads between conceptual art and performance. He once wanted to exclude any tangible trace and imposed a completely oral contract of sale on the collectors. The agreement nevertheless took place before the notary, in the presence of two witnesses. In this case the intervention of a notary was not an answer to the legal requirements. It contributed to the theatricalization of acts that surrounded the artwork's existence and to its inclusion among creative processes. The sold piece consisted of an oral protocol which defined its actions or performances to be accomplished by one or more interpreters. Its content was verbally stated: the circumstances of its performance, its duration, and the number of required interpreters. Since there was absolutely no written record, the actualization of the piece necessarily involved remembering. The owner of the artwork had to make a mental representation in order to be able to transmit it later to the interpreters or to the subsequent buyers. Even if the issue of memorizing performances is not singular to the work of Tino Sehgal, it assumes a unique scope here owing to the absence of archives that would make it possible to identify a stable *corpus* regardless of the variations during its execution.

In the work of Olivier Bardin,¹² there is a relationship built with one or more spectators. Olivier Bardin has invented methods that allow him to explore intersubjective frameworks in which the image of a person is constructed. Image, as he understands it, is similar to the visual identity of the subject. His methods offer to the spectators the possibility of living an artistic experience based on a physical and emotional implication: they are invited to become exhibition objects gazed upon by the artist and the other spectators, and to exercise their own gaze while facing them, in an equal exchange of roles. *Ce qui s'expose te ressemble* is the title of a series of four exhibitions that took place in 2007 and 2008 at the International Art and Landscape Centre on the island of Vassivière. Each exhibition lasted for two hours in the empty space of the art centre, with groups of five to fifty spectators, depending on the circumstances. For *You belong to me I belong to you*, a piece created in Geneva in 2008, he received sixteen persons in a vis-à-vis encounter in an empty exhibition venue. He would begin the encounter with the following statement: "I can do with you whatever I want with my gaze, and the same goes for you, you can do whatever you want with me." The duration of the "exhibition" depended on the desire of the two protagonists.¹³

Olivier Bardin has produced a *statement* that is sufficiently flexible for permitting these experiences to evolve in different ways, depending on the context, with him or a third party that he has appointed, but always according to the same principles. His *statement* consists of six fixed

¹² On the work of Olivier Bardin, see his monograph: Olivier Bardin, *Expositions* (Paris, Mix. éditions, 2011).

¹³ Photographs taken on this occasion have been published and put on display by the Centre d'édition contemporaine in Geneva. The edition includes 64 coloured photographs sized 22 x 30 cm, mounted between two acrylic plates, transparent in front and opaque in the back.



Olivier Bardin, *Biti izložen pogledu*, 2007.
Petnaestero studenata umjetnosti prate Oliviera Bardina u sobu za dramske probe. Umjetnik postavlja pitanje želi li netko biti izložen. Izložba započinje kada jedna od studentica prihvati poziv te pristane stajati nasred sobe nepomično i u tišini.

Olivier Bardin, *To Be On View*, 2007.
Fifteen art students accompany Olivier Bardin to the rehearsal room of a theatre. He asks if anyone would like to be put on display. The exhibition starts when one of them, a young woman, accepts. She decides to stay motionless and silent at the centre of the room.

elements: 1) The place; 2) The spectators; 3) The presence of the artist or of his representative; 4) An inaugural declaration, uttered by him or his representative in the language of the country where the exhibition is taking place; this declaration is related to the desire of exposing oneself and can vary according to the context; 5) The duration, determined by each of the spectators; 6) Eventually, the instruments of audiovisual recording.

His pieces can become subject to a contract of sale, where the object will consist in the right to activate the plan and to present its actualization as an "exhibition of the person" of Olivier Bardin. They actually show the features of the intellectual form as we have defined it: they rely on a sort of organization that confers upon them the autonomy of an object that can be acquired. Thus they can circulate in legal transactions as well, even if their inclusion in the domain of literary and artistic property seems rather disputable, since the condition of the form required by the special law might be judged as unfulfilled. The artistic device of Olivier Bardin involves a transfer of rights over the image, organized before the beginning of the exhibition, which includes the possibility of using the photographs taken on this occasion in his artistic work. For the sake of the "equality of arms" in exercising the gaze and renouncing at the control over the image, he authorizes the spectators who are present to take photographs as well, and to circulate them at their will. Thus law proves itself capable of accompanying the birth of very different art forms.

The body as a basis and material for an artwork

When the artist raises his own body to the status of an artwork, the classical parameters of art are pushed to their limits. Recourses to law can then help distinguish the body as an artistic medium from the body identified with a human being, and thus pinpoint the creation. In fact, there are two legal approaches to the body, which correspond to the notion of person: on the one hand, there is the "legal person", and on the other the human person. The "legal person" is a functional concept. It does not designate a human being, but an abstract entity that serves as a basis for establishing legal relations: it is an artefact, a fiction of law. The "person" cannot, however, participate in the legal life unless based on a real substrate. It cannot be a pure form. The human person refers to this substantial reality. All that might compromise its function of support is prohibited; in all other respects, the detachable parts of the body – elements and products of human body, excluding the human body taken as a whole – can theoretically be seen as objects. The category of "legal person" thus allows us to think of the body as something different than human person, because through it the separation of subject and object of law has been conceptually accomplished.

The bioethical laws of July 29, 1994 – revised and complemented by the law of August 6, 2004 – established for the first time the human body as an autonomous legal category that should be protected. The law of 1994, however, does not confer legal value to the corporal substrate of the person alone: the unity of that substrate is virtually lost. The law speaks of organs, tissues, bodily products, embryos, blood, and the operation relevant for these different disjointed elements *"as if the body of the person on behalf of which this body is preserved is nothing more than a provisory organization of transitory elements, a complex that will not last longer than a movement, and which constrains us to modify the idea that we have of the natural and the artefact."*¹⁴

14 Yan Thomas, "Le sujet de droit, la personne et la nature. Sur la critique contemporaine du sujet de droit," *Le Débat* 100 (May–August 1998).

An artist like Orlan plays with these polarities revealed by the law, while remaining within the limits of lawfulness. She has turned her body into a basis and material for her artistic practice. Between 1990 and 1993, she has undergone nine operations destined to modify her features according to various models chosen for their mythical content (Mona Lisa, Psyche, Botticelli's Venus, the devil). Each of these operations was designed as a performance, filmed and photographed. Orlan has been pursuing her exploration of the limits of beauty by questioning the biological laws governing the form of the human body. She is interested in biotechnologies, particularly skin cultures, and she is regularly involved in discussions with researchers and medical doctors. She is planning to collect cells from her skin and let them be hybridized with the cells of black persons. These cells will then be cultivated in a laboratory to produce enough flesh to make a coat. She thus claims herself in control of the definition of her body and its identity. She pushes to the very limits the idea of the body as an artefact, and explores the boundaries of identity, equally tackled by the most current legal debates.

These different expressions highlight the contribution of law to the sphere of art. Law thus imposes itself as a *corpus* that should be taken into account if we want to grasp all the implications of contemporary art forms, and to rethink the very idea of form from a different angle.



Umjetnost, demokratizam i temeljna demokracija

Istraživanje o New World Summitu

Jonas Staal

S engleskoga prevela Marina Miladinov

Na što mislimo kada govorimo o “umjetnosti”?

K ako bismo odgovorili na pitanje na što mislimo kada koristimo riječ “umjetnost”, mislim da se najprije moramo pozabaviti ideološkim kontekstom unutar kojega se riječ “umjetnost” artikulira i unutar kojega djeluje.

Zahvaljujući neprestanim izravnim napadima nizozemskih političara ekstremne desnice na suvremene umjetnike i umjetničke ustanove, za koje oni tvrde da su propaganda ljevice – ili onoga što je od ljevice ostalo – riječ “umjetnost” danas je u Nizozemskoj gotovo potpuno izgubila svoj “suvereni” status. Koliko god to bilo neugodno, čini se da je desnica donekle u pravu. Terminologija koju koristi kako bi diskvalificirala umjetnost, poput danas ozloglašenog koncepta umjetnosti kao “ljevičarske razbibrige”, možda je opscena, ali je činjenica da je aktualna kulturna infrastruktura u Nizozemskoj ukorijenjena u eri koja je ideološki jasno definirana. Zahvaljujući diskursu ekstremne desnice, riječ “umjetnost” vratila se na svoje mjesto u davno zaboravljenoj socijaldemokratskoj politici kakva se formirala nakon Drugog svjetskog rata.

Ta je politika definirala zadaću kulturne infrastrukture da proširi umjetnost i kulturu kroz sve slojeve stanovništva. Socijaldemokrati su smatrali umjetnost oblikom znanja koje pripada zajedničkom, kolektivnom projektu izgradnje nove civilizacije, a ne vlasništvom aristokratske manjine koja je vladala starim svijetom koji je skončao u totalitarizmu. No čak i ako ekstremna desnica opravdano smatra umjetnost nedvojbeno ljevičarskom propagandom, njezinu diskursu nedostaje preciznosti i povijesne svijesti. Doduše, u pravu su kada kažu kako vrijednosti koje u umjetničkom diskursu pripisujemo ulozi umjetnosti u društvu imaju korijene u toj specifičnoj, socijaldemokratskoj tradiciji. To je projekt demokratizacije znanja, koji u osnovi podržavam. Međutim, uvjeti pod kojima se ta demokratizacija trebala dogoditi naposljetku su zamaglili upravo ono o čemu se tu radilo, i trebalo je doći do intervencije ekstremne desnice kako bi se iznova uspostavila ideološka jezgra nizozemske kulturne infrastrukture.

Upravo je u kontekstu tog specifičnog socijaldemokratskog projekta nizozemski umjetnik uspio steći svoju proslavljenu *slobodu*: u obliku ideje o umjetniku i samoj umjetnosti kao *suverenim entitetima*. I upravo je ta ideja ono čemu se protivim: ideja o suverenoj umjetničkoj slobodi prikriva *ključnu političku zadaću* koja pripada umjetnosti kao obliku znanja i distribucije znanja. Ta je ideja ostatak kulturne infrastrukture koja se razvila nakon Drugog svjetskog rata, a koja je trebala osigurati umjetnicima sredstva kako bi stvarali nesputani utjecajem politike. Neometani propagandističkom svrhom koju je nacistički režim – koji je do danas ostao simboličko utjelovljenje totalitarizma 20. stoljeća – namijenio umjetnosti. Upravo je taj *strah od propagande* zamaglio bitno ideološki projekt u koji se umjetnost otisnula. Taj je strah stvorio depolitiziranu umjetnost, koja vjeruje kako je suverena, ali ustvari služi specifično političkoj svrsi.

Kao rezultat toga, nizozemska kulturna infrastruktura stvorena je s nepriznatim ciljem formalizacije ideala demokratske slobode, kojim se novonastali “prosvijećeni” Zapad razdvojio: prostorno od Istoka i vremenski od vlastite krvlju natopljene prošlosti. Nakon što je uspostavljena uloga umjetnika kao simbola demokratske civilizacije i slobode, više nije bio toliko važan *umjetnikov rad*, nego *nesputano postojanje umjetnika unutar same demokratske države*. Nije umjetnik taj koji oblikuje društvo, nego se samog umjetnika oblikuje na temelju vizije poslijeratne demokratske države.

Tu se susrećemo s temeljnim načelom doktrine o umjetničkoj slobodi: ako demokratska država jamči umjetniku slobodu, ona to čini uz dvostruki profit.

Kao prvo – ona svakog pojedinog umjetnika pretvara u živi kip slobode; umjetnici postaju propagandističko sredstvo samim time što država sponzorira njihovu slobodnu egzistenciju. Ali kao drugo i još važnije, *država istodobno više nije izravno odgovorna za rezultate koje umjetnik proizvede*.

Kad god političari neposredno preuzmu odgovornost, suočavaju se sa žestokom kritikom. Iako znamo da je stvarni kustos kulturne infrastrukture država, priznati tu situaciju značilo bi razbiti sustavno održavani privid umjetničke suverenosti kao stupa demokratske slobode.

Francuski filozof Jacques Ellul govori o našem tehnološki uvjetovanom društvu kao o društvu *totalne propagande*. Najveće postignuće totalne propagande je to što su čak i oni na vlasti – oni koji plaćaju umjetnike da budu živi kipovi slobode, avangarda demokratske države – povjerovali u to da njihovi postupci i politika nemaju nikakve veze s propagandom. Propaganda je stoga “totalna” od onog trenutka u kojemu postane jedina moguća istina, “naprosto način na koji radimo stvari”.

Demokratizam

Od trenutka u kojemu je nizozemska poslijeratna doktrina umjetničke slobode prenesena u kulturnu infrastrukturu svjedoci smo uspona jednog oblika propagande koji služi isključivo onome što Japanci nazivaju "demokratizmom". Na japanskom riječ "demokracija" postoji samo u tom obliku -izma, što demokratizam čini naprosto jednim od mnogih -izama koji su trenutno ideološki na raspolaganju. Ovdje ću koristiti riječ "demokratizam" kako bih tu pojavu razlikovao od demokracije.

Demokratizam podrazumijeva prenošenje emancipacijskih načela demokracije, koja se uvijek iznova provjeravaju, u stagnantnu, ne-refleksivnu ideologiju uprave i vladavine. Pritom je od ključne važnosti niz monopola koje demokratizam *provodi*, naime monopol nad nasiljem, monopol nad reprezentacijom, monopol nad informacijama i monopol nad poviješću. Mišljenja sam da je umjetnost, unatoč tome što tvrdi da je oblik proizvodnje znanja i izvor alternativnih povijesti, unutar konteksta demokratizma ustvari nemoćno zarobljena u vlastitoj doktrini suverenosti.

Bolna je istina da se umjetnost, budući da se smatra slobodnom, ne može referirati ni na što osim na *status quo* samog demokratizma.

Nizozemska kulturna infrastruktura očito nije jedini proizvod propagande koji sustavno niječe vlastiti ideološki program. Možemo, na primjer, spomenuti čuveni projekt pod nazivom Kongres za kulturnu slobodu, koji je CIA financirala tijekom Hladnoga rata i koji je, između ostaloga, imao zadatak da globalno promiče djela američkih slikara apstraktnog ekspresionizma kao odgovor na likovni režim socrealizma, službeno ratificirane umjetnosti Sovjetskog Saveza.

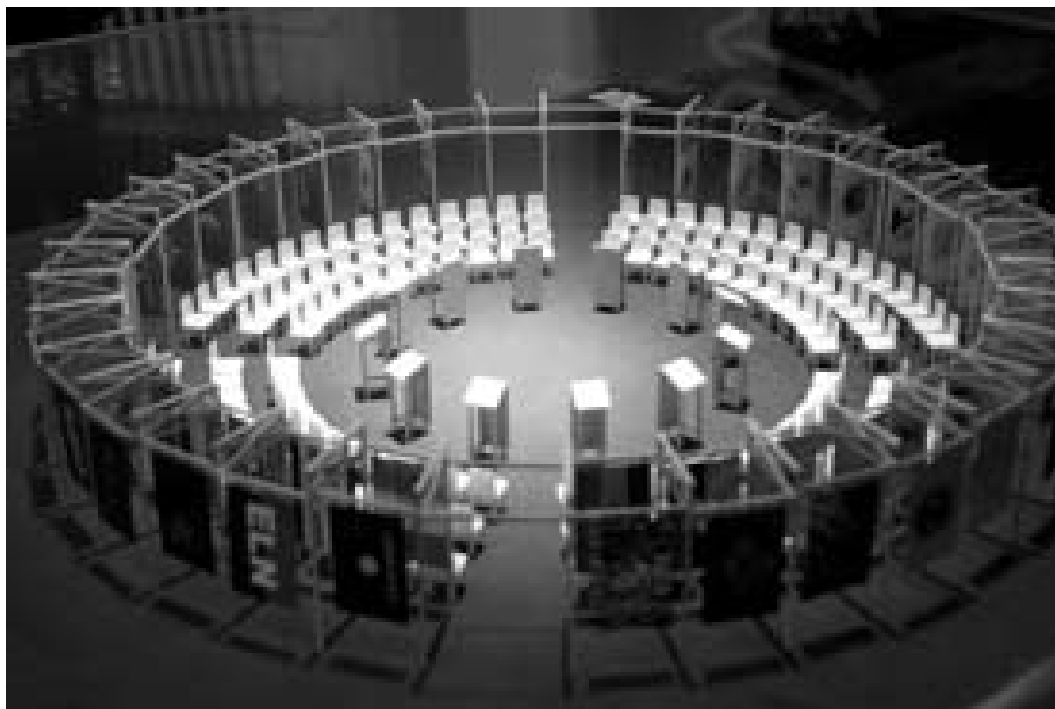
Putem Kongresa za kulturnu slobodu ideja "apstraktne umjetnosti" transformirana je u sinonim za "slobodnu umjetnost". Iako američka javnost uglavnom baš i nije bila očarana djelima apstraktnih ekspresionista, ta je apstrakcija omogućila da se demokratizam u kontekstu Hladnoga rata prikaže kao "prirodni" ishod višestoljetnih socijalnih borbi, koji se sastojao *upravo u ukidanju svakog likovnog prikaza*. Djelo Jacksona Pollocka, sredstva Hladnoga rata, predstavlja ultimativnu figurativnu reprezentaciju umjetnikove nesposobnosti da shvati vlastitu ulogu u službi demokratizma. To znači da ja ne priznajem njegovo djelo kao apstrakciju, nego ga smatram nizom figuracija koje bismo mi trebali prihvatiti kao "apstrakciju".

Potrebna nam je neprestana kritika ideologije kako bismo prepoznali tipove infrastrukture koji našem umjetničkom radu pridaju pravo značenje, kako bismo ih razumjeli tako da ih možemo promijeniti. Ali kako ćemo prepoznati tipove propagande s kojima imamo posla u stanju totalne propagande? Terry Eagleton procjenjuje to stanje na sljedeći način: "Najučinkovitiji tiranin je onaj koji uvjeri svoje podčinjene u to da vole i žele njegovu vlast, da se poistovjećuju s njome: i stoga svaka praksa političke emancipacije uključuje najteži od svih oblika oslobođenja: oslobađanje nas samih od sebe samih."⁰¹ Danas, u stanju totalne propagande kako je opisuje Ellul, poteškoća je u tome što više nema nikoga tko bi se čak i poistovjetio s osobom na vlasti, a kamoli s tiraninom...

U onome što bismo danas smatrali "tradicionalnom" propagandom možemo već pronaći ključeve za način na koji će se nametnuti Ellulova totalna propaganda. U klasičnom crtanom filmu o Paji Patku iz 1942. godine pod naslovom "Lice Velikoga vođe" Pajo se nalazi u nacističkoj Njemačkoj, gdje jede kruh načinjen od drva i radi 24 sata dnevno uz minimalne pauze, tijekom kojih uživa u lažnoj planinskoj kulisi dok ga ne potjeraju natrag u

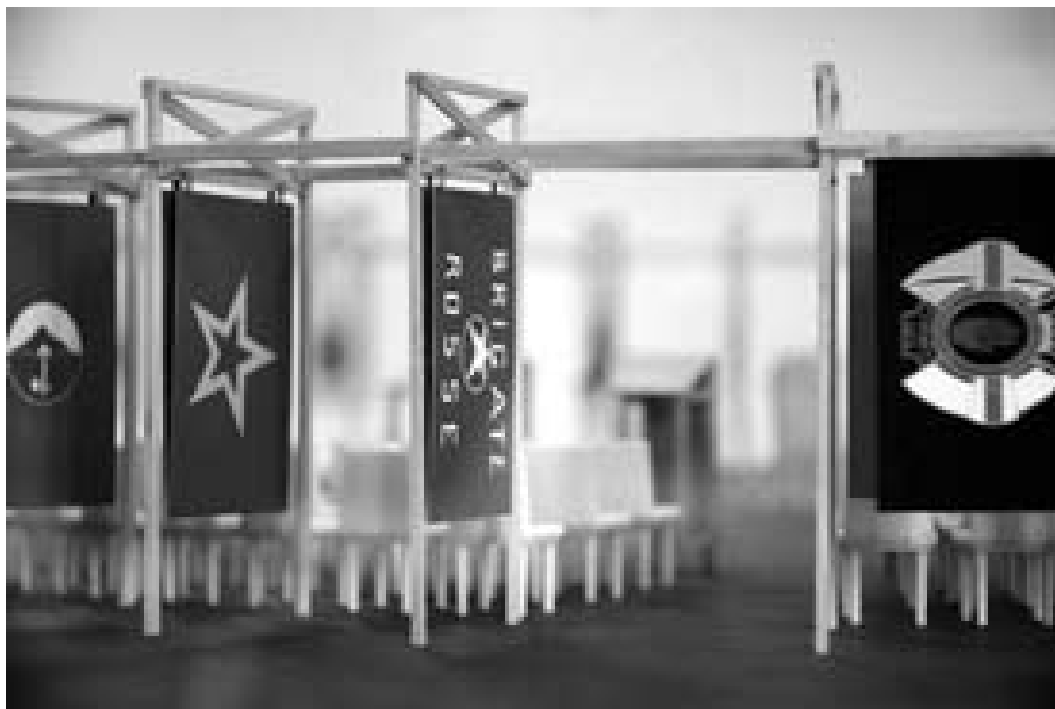
⁰¹ Terry Eagleton, *Ideology: An Introduction* (London/New York: Verso, 2007), str.xxiii.

Photo: Jonas Staal, 2012



**New World Summit
– Berlin (model)**

Photo: Jonas Staal, 2012



**New World Summit
– Berlin (model)**

tvornicu oružja gdje radi kao rob nacističke industrije. Kada se Pajo mentalno slomi uslijed pretjeranog radnog opterećenja, probudi se u vlastitom krevetu. Shvativši da je sve to bio samo san, odjednom ugleda sjenu nekoga tko izgleda kao nacistički časnik koji ga pozdravlja uzdignutom rukom – i uvjeren kako je sada i njegova vlastita zemlja potpala pod vlast nacista, Pajo odmah uzvratil pozdrav sjeni. U tom trenutku uviđa kako ustvari stoji pred sjenom Kipa slobode te se, razuvjeren, smireno vraća na spavanje. Upravo u tom trenutku – u kojem se jedna totalitarna doktrina suočava s drugom, a nacistički pozdrav se nakratko poistovjećuje sa stavom Kipa slobode – film nudi briljantnu kritiku našeg *pomanjkanja sredstava* da prepoznamo stanje totalne propagande u suvremenom demokratizmu.

Od institucionalne kritike do fundamentalne demokracije

Najvredniji prikaz izdaje emancipacijskih načela u imaginariju demokratističke propagande dalo je umjetničko istraživanje koje nazivamo "institucionalnom kritikom". To istraživanje koje još uvijek traje započelo je šezdesetih godina prošlog stoljeća. Umjetnici su naprosto prestali proizvoditi i izlagati objekte, nastojeći umjesto toga rasvijetliti politiku vlastite prakse, kao i politiku institucije koja predstavlja – i time uokviruje – njihovu praksu.

Umjetnici koji su se uključili u institucionalnu kritiku angažirali su se na emancipacijskom projektu, prepoznajući se kao dio umjetničke institucije, kao suučesnici "demokratske" države i "slobodnog" tržišta koje je definiralo politički, ekonomski i sveukupni ideološki okvir umjetnosti.

Zahtijevali su mogućnost uspostavljanja vlastitog okvira, i to ne kao autonomne, "suverene" jedinice, nego kao politička bića. "Svi mi uvijek služimo" – kako je to formulirala Andrea Fraser,⁰² umjetnica koja je bila dio "drugog vala"/druge generacije umjetnika uključenih u institucionalnu kritiku.

Fraser u tom kontekstu govori o "relativnoj autonomiji" umjetnosti. Upravo zbog toga što se umjetnost bavi povijesnim pitanjem što to znači "predstavljati", ona u kontekstu institucionalne kritike nikada "naprosto ne predstavlja", nego uvijek promišlja kontekst u koji se pozicionira. Upravo bismo u toj "refleksivnosti" umjetnosti, koja je rezultat njezine relativne autonomije, mi kao umjetnici pitanju Andree Fraser "Koga služimo?" trebali dodati pitanje *Koga želimo služiti?* Drugim riječima: *U koji politički projekt želimo smjestiti svoju praksu?*

Smatram da bi to trebao biti politički projekt u kojemu umjetnost nije naprosto instrumentalizirana od strane demokratističke politike kao propaganda slobode, nego u kojoj, upravo obrnuto, *umjetnost instrumentalizira politiku*.

Veoma sličnim pitanjem bave se oni koje bismo vjerojatno najbolje mogli okarakterizirati kao "međunarodni pokret za demokratizaciju", koji nipošto nije tako nov kao što se često govori, iako je posljednjih godina postao *vidljiv*, postavljajući svoje zahtjeve u dijalektičkom kretanju između "ne baš tako svjetskog World Wide Web" i "javnih" trgova naših gradova. Smatram da postavke tog pokreta u načelu formuliraju isti onaj zahtjev koji je iznijela institucionalna kritika, ali u širem političkom kontekstu. One se sastoje u odbijanju da se nastavi djelovati u uvjetima sfere kojom upravljaju nepoznati drugi (koji k tome niječu da imaju bilo kakvu "stvarnu" moć) te u zahtjevu da pojedinci sami oblikuju te uvjete i odlučuju o njima.

I u prosvjedima koje su organizirali španjolski Indignados, globalni Occupy Movement, pa sve do Modern Media Initiative (IMMI) i Wikileaks te

⁰² Andrea Fraser, "How to Provide an Artistic Service: An Introduction" (1994.), <http://ebookbrowse.com/how-to-provide-an-artist-service-introduction-by-andrea-fraser-pdf-d200390817>.

starijih "zelenih" i novijih "piratskih" stranaka, možemo prepoznati jedan te isti zahtjev: trebamo se reorganizirati kao politička bića.

Taj zahtjev direktno se sukobljava s monopolima demokratizma. On podrazumijeva demokratizaciju naše politike, demokratizaciju naše ekonomije, demokratizaciju naše ekologije i demokratizaciju naše javne sfere. To je zahtjev za istraživanjem načela egalitarističkog društva. Takvo društvo nije istovjetno s društvom u kojemu svatko ima prava nad imovinom svih drugih, niti s društvom gdje ne postoji nikakva privatna sfera ili intima – nego je to društvo u kojemu se neprestano preispituje koncept *vlasti* i pitanje *kako se ona uspostavlja te kome pripada*.

Zahtjevi globalnog pokreta za demokratizaciju uglavnom poprimaju oblik javnih prostora u kojima se značenje tog koncepta egalitarističkog društva istražuje u raznovrsnim kolektivima: putem prosvjeda, na trgovima i također u virtualnim prostorima. To su platforme gdje ne prenosimo svoj glas na nekog drugog, nego ga nastojimo sami oblikovati. Taj koncept demokracije kao pokreta političkih bića koji nije povezan s nekim određenim vođom ili dogmom, nego s načelima egalitarizma kao zajedničkog emancipacijskog projekta putem lojalnosti, ono je što nazivam *temeljnom demokracijom*. To je koncept koji je nepomirljiv s demokratizmom.

To, međutim, ne znači da naivno idealiziram konkretno djelovanje međunarodnog pokreta za demokratizaciju. Budući da sam dva mjeseca živio na trgovima s tridesetak umjetnika u sklopu manifestacije Occupy Amsterdam, doživio sam način na koji se prosvjedi protiv sustava mogu izokrenuti u svoju najizopačeniju zrcalnu sliku. Govorim o korupciji i zloporabi javnih donacija unutar tabora pokreta, o korištenju pretjerane birokracije kako bi se izmorili politički protivnici, o uporabi sile od strane takozvanih dobrovoljnih "čuvara reda" koji su bili na noćnoj straži, i također o noćnim deportacijama neželjenih osoba iz tabora kao što su bili psihijatarski pacijenti i imigrantski narkomani – ljudi koji su, kao što s pravom ističe filozof Ernst van de Hemel, ustvari okupirali trg *prije* nego što se ondje utaborio pokret Occupy Amsterdam. Tijekom ta dva mjeseca često sam govorio da je jedina dobra stvar u sustavu protiv kojeg se borimo to što nitko u pokretu Occupy Amsterdam nema ondje položaj moći.

To ne znači da je pokret propao. Taj prosvjed, kao i mnoge druge pojave koje su dio međunarodnog pokreta za demokratizaciju, nazvao bih kolektivnim *društvenim eksperimentom*. Occupy, IMMI i Wikileaks, Zelena i Piratska stranka: to nisu rješenja, to su *sredstva*. Stoga je za mene ono što međunarodni pokret za demokratizaciju predstavlja prije svega aktualna volja da se *krene s radom*. Preuzimajući na sebe zadaću otkrivanja što bi temeljna demokracija mogla biti putem raznih društvenih eksperimenata, mi ustvari istražujemo što to znači biti politička bića, koliko god to ponekad bilo zastrašujuće i razočaravajuće.

New World Summit

Proteklih godina surađivao sam s drugim umjetnicima, kao i s političarima, političkim strankama i neparlamentarnim političkim skupinama u nastojanju da odgovorim na sljedeće pitanje – kako bi, iz perspektive umjetničke prakse, trebalo koristiti diskurzivni prostor koji je otvorila institucionalna kritika, a da to bude u službi zahtjeva temeljne demokracije umjesto da služi kao još jedna legitimizirajuća sila demokratizma? Kao rezultat tih kolaboracija sada želim predstaviti svoju umjetničku i političku organizaciju New World Summit, koja

se nastoji strukturalno boriti protiv niza monopola koje sam opisao kao stupove politike demokratizma.

Prva tri izdanja New World Summita predstavljaju alternativne parlamente za političke i pravne predstavnike organizacija koje se trenutno nalaze na popisima takozvanih međunarodnih terorista. Popisi terorista obuhvaćaju organizacije koje se smatraju prijetnjom za državu u međunarodnim okvirima. U Europskoj uniji takve popise slaže tajni odbor po imenu Clearing House. Taj odbor sastaje se svake dvije godine, u tajnosti, i ne postoje javni protokoli za način na koji se donose odluke vezane uz popisivanje političkih organizacija. Moglo bi se s pravom reći da je taj odbor, čak i prema vlastitim standardima, zadužen za stavljanje organizacija "izvan" demokratizma te da je i sam organiziran na temeljno nedemokratski način.⁰³ Za organizacije na popisu i pojedince koji su s njima u dodiru, posljedice se sastoje u blokiranju svih bankovnih računa i zabrani izlaska iz zemlje.

Ključna karakteristika New World Summita je istraživanje potencijala *međunarodnog parlamenta*: on nema stalne geografske lokacije, ne predstavlja nijednu nacionalnu državu, nema imovine i nitko u njemu nema neograničeno pravo na govor. Naprotiv, on brani zahtjev svakog političkog bića da zastupa vlastite političke stavove, dokle god je ta osoba spremna to činiti u zajedničkom prostoru samita.

Do prvog okupljanja New World Summita došlo je 4. i 5. svibnja 2012. u Sophiensaele, kazališnoj i političkoj platformi u Berlinu. Poslane su pozivnice gotovo stotini organizacija koje se spominju na međunarodnim popisima terorista. Od onih koji su se odazvale uspjeli smo ugostiti četiri politička predstavnika i tri pravna predstavnika, odnosno odvjetnika takvih organizacija.

Prvi dio samita nosio je naslov "Promišljanja o zatvorenom društvu" i svaki je govornik mogao neometano održati predavanje o cilju svoje organizacije i sukobima kroz koje je prošla zbog uvrštenosti na popis međunarodnih terorista. Nije bila dopuštena nikakva intervencija iz publike.

Drugi dio nosio je naslov "Prijedlozi za otvoreno društvo" i zasnivao se na pitanjima iz publike. U tom pogledu, branio sam funkciju New World Summita tijekom ta dva dana kao oblika "radikalne diplomacije" tako što sam s jedne strane tim organizacijama ponudio nesputanu, iako zajedničku platformu, ali sam s druge strane tražio političku odgovornost da odgovaraju na jednako nesputana pitanja iz publike.

Drugi New World Summit održan je 29. prosinca 2012. u Leidenu i bio je usredotočen na političke, ekonomske, ideološke i pravne interese koji su uključeni u održavanje ideje o "teroristima", a glavni govornik bio je prof. Jose Maria Sison, suosnivač Komunističke partije Filipina (CPP) i njezina oružanog krila, Nove narodne vojske (NPA). Obje organizacije trenutno se nalaze na popisu "terorista" zbog njihove trajne oružane borbe protiv onoga što nazivaju "polukolonijalnom i polufeudalnom filipinskom vladom", koja se nalazi pod "imperijalističkom kontrolom SAD-a" i sastoji se od "comprador-buržoazije, veleposjednika i birokratskih kapitalista". Zatim je od nekoliko stručnjaka, koji su predstavljali različite slojeve sustava koji se vrti oko te ideje "terorizma" s ciljem da odvoji određene organizacije i pojedince od društva, zatraženo da odgovore Sisonu. Izmijenili su se odvjetnik, državni tužilac, sudac, političar i politolog, budući da svaki od njih predstavlja "sloj" koji razdvaja civile (publiku) od civila na popisu (predstavnika organizacija CCP i NPA).

Treći New World Summit trebao bi se održati u ožujku 2013. u otvorenom paviljonu Aspen House u indijskom mjestu Kochi i bilo je planirano da u njemu



⁰³ Izvor: "Adding Hezbollah to the EU Terrorist List" – Hearing before the Subcommittee on Europe of the Committee on Foreign Affairs House of Representatives, 20. lipnja 2007.



Photo: Lidia Rossner, 2012

Pogled na "alternativni
parlament" New World Summita,
Sophiensaele, Berlin

View of the "alternative
parliament" of the New World
Summit in the Sophiensaele,
Berlin

sudjeluje niz predstavnika političkih organizacija koje je indijska vlada "izbacila" iz političke arene, a koji su trebali održati predavanja o povijesti svojih organizacija, političkoj borbi i rezultatima koje su postigli, kao i raspravljati o svojim stajalištima međusobno i s publikom. Indijski kontekst pokazuje da postoje duboke veze između tih organizacija i kolonijalnog nasljeđa. Mnoštvo pokreta u Indiji koji se i dalje bore za pravo na samoodređenje uključuju široki spektar političkih usmjerenja, uključujući sektaške pokrete sikha, muslimana, kršćanskih baptista i hindusa, politički pokret maoističkih naksalita i teritorijalnu borbu starosjedilačkih naroda Tripura, Manipur, Assam i Tamil Nadu. New World Summit u Kochiju trebao je biti pokušaj da se političke borbe koje bukte širom indijskog potkontinenta učine vidljivima, te da se istraži veza između indijske kolonijalne povijesti i demokratizacije te organizacija koje su trenutno isključene iz političkog procesa.

Samo nekoliko tjedana nakon otvaranja paviljona, koji je izgrađen specijalno za New World Summit, policija u Fort Kochiju podigla je tužbu protiv mene i bijenala Kochi-Muziris u Kochiju (Kerala) 9. siječnja 2013., i to na osnovi Zakona o suzbijanju protuzakonitog djelovanja, odjeljak 10 (4). Državna tajna služba naredila je uklanjanje panoa na kojima su bile istaknute zastave organizacije koje su zabranjene u Indiji. Koristeći crnu i sivu boju (očito im je ponestalo crne), prekrili su njih dvadesetak, ostavivši nekih pet koje im nisu bile poznate, iako su i te organizacije na popisu. Zanimljivo je da je Tajna služba bez problema prekrila bojom zastave organizacija za koje su smatrali da nemaju veze sa državom, ali je pritom slijedila apstraktnu shemu boja na kojoj se zasniva svaki od alternativnih parlamenata, budući da organiziramo zastave prema boji, a ne prema geografskom položaju ili ideološkoj orijentaciji. Tri strane paviljona, od kojih je jedna crvena, druga plavo-zelena, a treća crno-bijela, bile su osnova za Tajnu službu da prekrije svjetlije zastave sivom bojom, a tamnije crnom. Tako se na čudan način apstrakcija ovdje pokazala najmoćnijom da promijeni ponašanje vlasti. Iako će prekriti sliku, vlasti će u toj koreografiji cenzure slijediti red boja kakav je odredio New World Summit.

Namjera New World Summita je zaobići postojeće anti-terorističke zakone tako što će: (1) iskoristiti postojeća pravna sredstva kako bi se provukao kroz niz sivih zona u zakonu; i (2) stvoriti nova sredstva s pomoću umjetnosti. U slučaju New World Summita u Kochiju, uspjeh tog pristupa ispituje se na najvišoj zamislivoj razini, jer New World Summit se progoni na osnovi istog onog zakona koji se koristi kako bi se određene organizacije stavile na popis.

Prvo sredstvo u tom procesu, koje je od ključne važnosti, sastoji se u sposobnosti samita da seli s jedne geografske lokacije na drugu. Danas gotovo sve zemlje imaju popis međunarodnih terorista i saveznice obično kopiraju te popise organizacija na upit. Na primjer, Nova narodna vojska, oružano krilo Komunističke partije Filipina, uvrštena je u Nizozemskoj na popis na zamolbu američke vlade, a ne zato što su sami osjetili neku konkretnu prijetnju. Ali uzmemo li u obzir činjenicu da nisu sve zemlje saveznice i da se ne poklapaju geopolitički interesi svih strana, ti popisi ponekad se ne podudaraju. Tako je organizacija poput Narodnih mudžahedina Irana, koja se zasniva na zanimljivoj kombinaciji marksizma i islamizma, smatrana terorističkom u SAD-u, ali ne više – nakon dugotrajne pravne borbe – u Europskoj uniji.

New World Summit je otvoren u Berlinu i sada nastavlja putovati svijetom te će idućih mjeseci preći put od Indije (ožujak 2013.) do Belgije (rujan 2014.). Svaki put ulazi u drugu pravnu i političku "zonu" te je stoga

sposoban ponuditi platformu glasovima koje nije mogao ugostiti na prethodnim sastancima. Teoretski, na taj način će New World Summit – parlament u tijeku – na svojim putovanjima ugostiti sve organizacije koje se danas nalaze na popisima međunarodnih terorista.

Iz tog razloga opisujem New World Summit kao “demokratski dodatak”. To je injekcija znanja koje je demokratizam potisnuo, i koja je vraćena u javnu sferu uporabom drugog sredstva koje je ključno za razvoj ovog projekta, a to je zakonski izuzetan položaj vizualne umjetnosti.

Značenje “relativne autonomije” umjetnosti najbolje se pokazuje s gledišta zakona. Evo jednostavnog primjera. U Njemačkoj se jedna od zastava istaknutih na New World Summitu, zastava Radničke stranke Kurdistana (PKK), ne smije isticati u javnim prostorima kao što je Sophiensaele, lokacija samita. Kazna od šest mjeseci zatvora može se dosuditi onome tko prekrši taj zakon. Ali budući da parlament samita ne organizira zastave popisanih organizacija prema geografskoj lokaciji ili ideološkom usmjerenju, nego na osnovi boje, nemoguće je smatrati pokazivanje zastave PKK “jedinostvenim” prekršajem. Ja tvrdim da je ta zastava dio sheme boja, apstraktne slike koji stvara organizacija svih zastava zajedno. Ukloniti jednu zastavu znači uništiti apstrakciju koja je ključ djela kao instalacije. To bi značilo uništiti moje umjetničko djelo. A ipak, za pozvane organizacije “istina” njihovih zastava ne umanjuje se time što su organizirane prema boji. Te dvije stvarnosti, umjetnička i politička, postoje istovremeno: zastave su apstraktne, a istovremeno su i potpuna suprotnost apstrakciji. Te dvije stvarnosti ne poriču jedna drugu; one postoje kao posljedica jedna druge. Ali pred zakonom umjetnička sloboda ironično pobjeđuje politički iskaz. Filozof Vincent van Gerven Oei reartikulirao je koncept “relativne autonomije” umjetnosti u kontekstu New World Summita kao “relativnu ilegalnost” umjetnosti. Upravo to konstruktivno “stanje izuzetosti” unutar pravnog okvira može postati važno političko sredstvo za ljude koji su podvrgnuti onom drugom “stanju izuzetosti”: onome koje je smjestilo organizacije “izvan” demokratizma s pomoću popisa međunarodnih terorista. Kao takva, relativna ilegalnost umjetnosti može stvoriti nove oblike javne sfere, u kojoj se mogu očitovati nove povijesti – one brojne povijesti koje su popisi međunarodnih terorista potisnuli iz svijesti demokratizma. To su povijesti prema otporu. U slučaju Kochija, ta se strategija još treba dokazati: iako se ponovo pokazalo da se egalitarističko načelo apstrakcije dokazalo kao moćno sredstvo u inženjeringu Tajne službe u koreografiji kojom je cenzurirala paviljon.

Istinski cinik mogao bi reći da su organizacije koje su govorile na samitu bile naprosto “uprizorene” u umjetničkim kontekstima kao neka vrsta zatečenog objekta, *objet trouvé*, kuriozitet.

Odgovorit ću na taj cinizam konkretnim primjerom sa samita. Kada je jedan od govornika, Luis Jalandoni, koji je govorio u ime Komunističke partije Filipina i njezina oružanog krila, Nove narodne vojske, uzeo riječ i rekao: “Ja sam Luis Jalandoni, a ono je moja zastava”, pokazujući na drugu stranu prostorije, nije bilo sumnje da za njega taj prostor nije politički prostor unatoč prisutnosti umjetnosti, nego je politički prostor upravo zbog umjetnosti. Taj je prostor postao političkim ne naprosto zato što sam ga ja označio kao takav, nego zato što su govornici zajedno sa mnom zahtijevali da bude takav. Ako ništa drugo, te organizacije su nas podučile hitnošću s kojom su vratile politiku u teatar. Ne kao puki privid politike u negativnom smislu riječi, nego kao pravo mjesto za govor o značenju koncepta reprezentacije: za postavljanje ključnih pitanja koja su teatar i politiku učinila idealnim međusobnim izvorima.

Photo: Lidia Rossner, 2012



Predavanje "Pregovori o pravu baskijskog naroda na samoodređenje" Jona Andonia Lekuea, bivšeg člana Batasune, političkog ogranka organizacije Baskijska domovina i sloboda (ETA), danas člana pregovaračkog tima u korist baskijske autonomije, NWS, Sophiensaele, Berlin.

Lecture "Negotiating the Basque's People Right to Self-Determination" by Jon Andoni Lekue, former member of Batasuna, the political wing of Basque Homeland and Freedom (ETA), today part of the negotiating panel on behalf of Basque autonomy at NWS Sophiensaele, Berlin

Photo: Lidia Rossner, 2012



Predavanje "Političko podzemlje Filipina" Luisa Jalandonia, predsjedatelja Nacionalne Demokratske Fronte Filipina (NDFP), NWS, Sophiensaele, Berlin.

Lecture "The Political Underground in the Philippines" by Luis Jalandoni, chairman of the National Democratic Front of the Philippines (NDFP) at NWS in Sophiensaele, Berlin

Photo: Lidia Rossner, 2012



Predavanje "Žene i demokratija: Kurdsko pitanje i šire perspective" Fadile Yildirim (desno) i prevoditeljja Merela Ciceka (lijevo) u ime Kurdskog feminističkog pokreta, NWS, Sophiensaele, Berlin.

Lecture "Women and Democracy: The Kurdish Question and Beyond" by Fadile Yildirim (right) and translator Merel Cicek (left), on behalf of the Kurdish feminist movement, NWS, Sophiensaele, Berlin

Photo: Lidia Rossner, 2012



Predavanje "Pravo tuareškog naroda na samoodređenje" Moussa Ag Assarida, glasnogovornika Pokreta za nacionalno oslobođenje Azawada (MNLA), NWS, Sophiensaele, Berlin.

Lecture "The Tuareg People's Right to Self-Determination" by Moussa Ag Assarid, spokesman of the National Liberation Movement of Azawad (MNLA) at NWS in Sophiensaele, Berlin

Art, Democratism, and Fundamental Democracy

An Exploration of the New World Summit

Jonas Staal

What Do We Mean When We Say “Art”?

In order to answer the question What do we mean when we use the word “art”?, I believe we should first address the ideological context within which the word art is articulated and operational.

Owing to the sustained frontal attack of Dutch extreme-right politicians on contemporary artists and art institutions, which they claim to be propaganda for the left – or whatever is left of the left – the word “art” has now indefinitely lost its “sovereign” status in the Netherlands. It seems that, uncomfortably enough, the extreme right has a point. The terminology that they use to disqualify art, such as the now infamous concept of art as a “leftist hobby,” may be obscene, but the fact of the matter is that the current Dutch cultural infrastructure is rooted in a clearly ideologically defined era. Because of the extreme-right discourse, the word “art” has today returned to its place in a long forgotten social-democratic post-WWII policy.

This policy described the task of the cultural infrastructure as spreading art and culture to the entire population. The social-democrats perceived art to be a form of knowledge that belonged to the shared collective project of building a new civilization, rather than art being the property of an aristocratic minority that had ruled the old world which had collapsed in totalitarianism. But even though the extreme right justifiably considers art unambiguously to be propaganda for the left, their discourse lacks precision

and historical awareness. Nonetheless, they are right that the values that we attribute in artistic discourse to the role of art in society, finds its roots in this specific, social-democratic tradition. A project of democratizing knowledge, which I in essence support. However, the conditions under which this democratization was supposed to take place ended up obfuscating precisely what was at stake, and it took the intervention of the extreme right to reassert the ideological core of the Dutch cultural infrastructure

It was in the context of this specific social-democratic project that the Dutch artist was able to gain his celebrated *freedom*: the idea of the artist and art itself as *sovereign*. This idea is precisely the one I object to: the idea of sovereign artistic freedom masks the *essential political task* attributed to art as a form of knowledge and knowledge distribution. This idea is a remainder of the post-WWII cultural infrastructure which was meant to provide artists with the means to create their work unrestrained by political influence. Unrestricted by the propagandistic use that the Nazi regime – which today remains the symbolic embodiment of 20th century totalitarianism – had made of the arts. It is this *fear of propaganda* that has obscured the essentially ideological project that art embarked upon. This fear created a depoliticized art, believing it was sovereign yet serving a specifically political goal.

As a result, the Dutch cultural infrastructure was created with the unacknowledged aim to formalize the ideal of democratic freedom, with which the newly risen “enlightened” West distinguished itself both in space from the East and in time from its blood-soaked past. By establishing the role of the artist as the symbol of democratic civilization and freedom, it was not so much the *artist’s work* that mattered, but the *unrestrained existence of the artist within the democratic state itself*. It is not the artist that sculpts society, but it is the artist himself who is sculpted based on a vision of the post-WWII democratic state.

We encounter here the underlying principle of the doctrine of artistic freedom: if the democratic state grants freedom to the artist, it does so at a double profit.

First – it makes each and every artist into a living statue of liberty; they become a propagandistic tool merely because the state sponsors their free existence. But second, and most importantly, *the state is at the same no longer directly responsible for the results that the artist produces*.

Whenever politicians do take direct responsibility, they are met with heavy criticism. Even though we know that the real curator of the cultural infrastructure is the state, acknowledging this situation would dispel the systematically sustained smokescreen of artistic sovereignty, as a pillar of democratic freedom.

The French philosopher Jacques Ellul speaks of our technologically driven society in terms of *total propaganda*. The biggest achievement of total propaganda is that even those in power – those who commission the artists to become the living statues of liberty, the avant-garde of the democratic state – have come to believe their actions and policies have nothing to do with propaganda. Propaganda is thus “total” at the moment it becomes the only possible truth, “just the way we do things.”

Democratism

From the moment that the Dutch post-war doctrine of artistic freedom was translated into a cultural infrastructure, we have witnessed the rise of a form of propaganda that solely serves what the Japanese call democratism. In Japanese the word “democracy” only exists as an “ism” – making democratism simply one of the many -isms that are currently ideologically available. I propose to use the word “democratism” as a differentiation from the word democracy.

Democratism indicates the translation of the constantly self-reassessing emancipatory principles of democracy into a stagnant, non-reflexive ideology of administration and governance. Of core importance is a series of monopolies that democratism *enacts*, namely the monopoly on violence, the monopoly on representation, the monopoly on information and the monopoly on history. I would argue that, despite art’s claims as a form of knowledge production and source of alternative histories, it is within the context of democratism impotently trapped in its doctrine of sovereignty.

The painful truth is that exactly because art is considered free, it cannot refer to anything but the status quo of democratism itself.

The Dutch cultural infrastructure is obviously not the only propagandistic product in systematic denial of its own ideological agenda. We may, for example, point to the notorious CIA-funded project during the Cold War, the Congress for Cultural Freedom, which among others had the task of globally promoting the works of American abstract expressionist artists, in response to the pictorial regime of socialist realism as the officially sanctioned art of the Soviet Union.

Through the Congress for Cultural Freedom, the notion of “abstract art” was transformed into a synonym of “free art.” Even though the American public at large was not at all charmed by the works of the abstract expressionists, this abstraction allowed democratism in the context of the Cold War to be depicted as the “natural” outcome of centuries of social struggles *exactly by ruling out all depiction*. The work of Jackson Pollock, this weapon of the Cold War, is the ultimate figurative representation of the incapacity of the artist to understand his role as an instrument of democratism. This implies that I do not acknowledge his work as abstract, but that I perceive it as a series of figurations that we are supposed to recognize as “abstraction.”

We are in permanent need of a critique of ideology in order to identify the types of infrastructure that convey the real meaning to our work as an artist, to understand them so we can change them. But how to know the types of propaganda that we are dealing with in a state of total propaganda? Terry Eagleton evaluates this condition as follows: “The most efficient oppressor is the one who persuades his underlings to love, desire and identify with his power: and any practice of political emancipation thus involves that most difficult of all forms of liberation: freeing ourselves from ourselves.”⁰¹ The difficulty today, in the condition of total propaganda as described by Ellul, is that there is no longer anyone who even identifies him or herself as the person in power, let alone as the oppressor...

Within what we would currently consider as “traditional” propaganda, we may already find the clues of the way in which Ellul’s total propaganda will come to assert itself. In the classic 1942 Donald Duck cartoon “Der Führer’s Face”, Donald finds himself as a Nazi in Germany, where he eats bread made of wood, works 24 hours per day, with only minor breaks during

⁰¹ Terry Eagleton, *Ideology: An Introduction* (London/New York: Verso, 2007), xxiii.

which he enjoys a fake mountainous background, before being forced back into the weapons factory where he is enslaved by the Nazi industry. When Donald mentally crashes due to the excessive workload, he wakes up in his own bed. Upon realizing it was just a dream, he suddenly sees the shadow of what seems to be a Nazi officer saluting him – convinced that his own country has now been taken over as well; Donald immediately returns the shadow's Nazi salute. At that moment he realizes that he is actually standing in front of the shadow of the Statue of Liberty, and thus reassured he calmly returns to sleep. But at this specific moment – the moment in which one totalitarian doctrine is confronted with another, in which the Nazi salute is for a brief moment equated with the Statue of Liberty's pose – the film provides a brilliant criticism of our *lack of tools* to recognize the condition of total propaganda in contemporary democratism.

From Institutional Critique to Fundamental Democracy

The betrayal of emancipatory principles in the imagery of democratism's propaganda, has been addressed most valuably in the artistic research that we call Institutional Critique. This ongoing research started in the sixties of the last century. Artists simply stopped producing and exhibiting objects, trying instead to shed light on the politics of their own practice as well as the politics of the institution representing – thus framing – their practice.

The artists involved in Institutional Critique engaged in an emancipatory project, recognizing themselves as part of the art institution, as complicit to the “democratic” state and “free” market regimes that defined art's political, economic, and overall ideological framing.

They demanded to establish their own framing, not as autonomous, “sovereign” units, but as political beings. “We are all, always already serving,” are the words of Andrea Fraser⁰², an artist that was part of the “second wave” – the second generation – of artists engaged in Institutional Critique.

Fraser in this context speaks of art's “relative autonomy”. Exactly because art deals with the historical question of what it means to “represent,” it is in the context of Institutional Critique never “just representing,” but always reflective of the context in which it positions itself. It is in this “reflexivity” of art, a result of its relative autonomy, that we, as artists, should add to Fraser's question ‘Whom we are serving’ the question *Whom do we want to be serving?* In other words: *within which political project do we desire to situate our practice?*

I believe that this should be a political project in which art is not simply instrumentalized by democratist politics as a propaganda of freedom, but in which, vice versa, *politics in its turn is instrumentalized by art*.

A very similar question is addressed by what may probably best be described as the “international democratization movement,” which is certainly not as new as often suggested, although it has *visibly* emerged in the recent years developing its claims in a dialectic movement between “a not-so World Wide Web” and the “public” squares of our cities. I believe that this movement's claims in principle formulate the same demand that Institutional Critique has brought forward, but within a broader political context. These consist in the refusal to continue to operate under the conditions of a domain dictated by unknown others (who moreover deny having any “real” power), and a demand to shape and decide upon these conditions themselves.

02 Andrea Fraser, ‘How to Provide an Artistic Service: An Introduction’, 1994. <http://ebookbrowse.com/how-to-provide-an-artist-service-introduction-by-andrea-fraser-pdf-d200390817>.

Through the Spanish Indignados protests and worldwide Occupy movement, through the Modern Media Initiative (IMMI) and Wikileaks, through the old Green and the new Pirate Parties we can recognize a single demand: the demand to organize ourselves as political beings.

This demand directly confronts the monopolies of democratism. It entails the democratization of our politics, the democratization of our economy, the democratization of our ecology, and the democratization of our public domain. It is a demand to explore the principles of an egalitarian society. Such a society is not the same as a society where everyone has the right to everyone's belongings, or a society where there is no such thing as a private sphere or intimacy – a society in which the concept of *power*, the question *how it is constituted* and to *whom it belongs* is placed into permanent question.

The demands of the worldwide democratization movement rather take the shape of public spaces where the meaning of this concept of egalitarian society is explored in varying collectives: through protests, squares, as well as virtual spaces. These are platforms where we do not outsource our vote – in Dutch literally meaning “voice”, stem – but where we attempt to shape these ourselves. This concept of democracy as a movement of political beings, not tied to single leaders or dogmas, but through a fidelity to the principles of egalitarianism as a shared emancipatory project, is what I call *Fundamental Democracy*. It is a concept that is irreconcilable with democratism.

This however does not mean that I naively idealize the concrete functioning of the international democratization movement. Having lived on the squares of Occupy Amsterdam with a group of about thirty artists for more than two months, I have experienced how protests against a system can turn into its most perverted mirror. I speak of corruption by the abuse of public donations within the Occupy camp, the deployment of excessive bureaucracy in order to wear out political opponents, of the use of violence by so-called voluntary “peace-keepers” who were on night watch, and I speak of nightly deportations from the camp of unwelcome subjects such as psychiatric patients and immigrant drug addicts – people who, as philosopher Ernst van de Hemel has rightfully pointed out, were in fact occupying the square *before* the Occupy movement set camp. During those two months I often said that the only thing that is good about the system that we are opposing is that no one in the Occupy movement holds a position of power in it.

This does not mean that Occupy has failed. I would call the protest, and many of the phenomena that are part of the international democratization movement, collective *social experiments*. Occupy, IMMI and Wikileaks, the Green and Pirate Parties: these are not solutions, they are *instruments*. What the international democratization movement represents for me is thus most of all the current will to *start working*. By taking on the task of exploring what fundamental democracy may be through different social experiments, we explore what it means to be political beings, however terrifying and disillusioning that sometimes might be.

New World Summit

In the past years I have collaborated with other artists, with politicians, political parties, and non-parliamentary political groups in an attempt to answer the question - how, from the perspective of an artist's practice, to

use the discursive space opened by Institutional Critique in the service of the demands of fundamental democracy, rather than as another legitimating force of democratism? As a result of these collaborations I will now introduce my artistic and political organization New World Summit, which attempts to structurally oppose a series of monopolies that I described as the pillars of democratist politics.

The first three editions of the New World Summit present alternative parliaments for political and juridical representatives of organizations currently placed on so-called international terrorist lists. The terrorist lists comprise organizations that are internationally considered to be state threats. In the European Union, a secret committee, the so-called "Clearing House," draws up the EU terrorist list. The Clearing House meets bi-annually, in secret and there are no public proceedings of the way decisions are made for the listing of political organizations. One could rightfully say that even by its own standards, the committee that is in charge of placing organizations 'outside' of democratism, is itself organized in a fundamentally undemocratic manner.⁰³ The consequences for the listed organizations and people who are in contact with them include a block on all bank accounts and an international travel ban.

A core characteristic of the New World Summit is that it is an exploration of the potential of an *international parliament*: it has no fixed geographical location, it represents no nation state, no properties or indefinite claims on the right to speak. On the contrary, it defends the demand of each and every political being to represent his or her political beliefs, if willing to do so in the shared space of the summit.

The first installment of the New World Summit took place on 4–5 May 2012 in the Sophiensaele, a theater and political platform in Berlin. Invitations to about one hundred organizations mentioned on international terrorist lists were dispatched. From the respondents we were able to host four political representatives, and three juridical representatives, the lawyers of such organizations.

The first day of the summit, entitled "Reflections on the Closed Society," allowed each speaker to hold an uninterrupted lecture on the goal of their organization and the confrontation they experienced with the existence of the international terrorist lists. No intervention from the audience was allowed.

The second day, entitled "Proposals for the Open Society," was based on an interrogation by the audience. As such, I defended the function of the New World Summit in these two days as a form of "radical diplomacy," by on the one hand proposing an unrestricted, albeit shared, platform to the organizations, but on the other hand by demanding political accountability through the similarly unrestricted interrogation by the audience.

The second installment of the New World Summit took place on 29 December 2012 in Leiden, and focused on the political, economic, ideological, and juridical interests that are invested in upholding the notion of "terrorist" by hosting as the keynote speaker Professor Jose Maria Sison, co-founder of the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). Both organizations are currently included on "terrorist" lists as a result of their ongoing armed struggle with what they describe as a "semi-colonial and semi-feudal Philippine government," which is under "US imperialist control" and consists of "comprador bourgeoisie, landlords and bureaucrat capitalists." Several experts representing the different layers of the system that revolves around this notion of "terrorism," separating certain

⁰³ Source: "Adding Hezbollah to the EU Terrorist List – Hearing before the Subcommittee on Europe of the Committee on Foreign Affairs House of Representatives", 20 June 2007.

Photo: NWS, 2012



**Prikaz "alternativnog parlamenta"
New World Summita s ručno
izrađenim pločama, Aspin House,
Kochi**

**Impression of the "alternative
parliament" of the New World
Summit with hand painted panels
at the Aspin House in Kochi**

organizations and individuals from society, were asked to respond to Sison. In turn, a lawyer, a public prosecutor, a judge, a politician, and a political theorist spoke, each representing a "layer" that separates a civilian (the audience) from a listed civilian (representatives of the CCP and NPA).

The third installment of the New World Summit was held in March 2013 in an open air pavilion at the Aspen House in Kochi, India, and planned to feature a number of representatives of political organizations "banned" from the political arena by the Indian government, who would present lectures on the histories of their organizations, on their political struggles, and gained results, as well as debate their views with each other and the audience. The Indian context shows that there are profound ties between these organizations and the colonial legacy. The many movements in India that continue to fight for the right to self-determination comprise a wide variety of political orientations, including the sectarian movements of Sikhs, Muslims, Baptist-Christians, and Hindus, the political movement of the Maoist Naxalites, and the territorial struggles of the indigenous peoples of Tripura, Manipur, Assam, and Tamil Nadu. The New World Summit in Kochi is an attempt to make these political struggles, waged across the Indian sub-continent, visible, and an investigation of the relationship between India's history of colonialism and democratization and the organizations currently excluded from the political process.

Only a few weeks after the inauguration of the pavilion, which was built for the summit only, the Fort Kochi Police registered a case against me and the Kochi-Muziris Biennale, at Kochi, Kerala on January 9, 2013 under the Unlawful Activities (Prevention) Act Section 10 (4). The State Intelligence ordered the removal of panels depicting the flags of organizations banned in India. Through the use of black and greys (they obviously lacked enough black paint) they covered about twenty of them, leaving about five they were

not familiar with, but which are listed nonetheless. Interestingly enough, the State Intelligence felt no objection to paint over the flags of organizations that they considered to be unrelated to the state, but did follow the abstract color scheme that lies at the basis of each of the alternative parliaments, as we organize the flags by color, not by geographic placement or ideological orientation. The three sides of the pavilion, ordered one side in red, the other in blue and green and the last in black and white formed the basis for the State Intelligence to cover lighter flags in grey, and more darker ones in black. So in a strange way, here abstraction shows itself the most powerful in changing the behavior of the authorities. They will cover the image, but they will follow the order of colors as decided by the New World Summit when it comes to this choreography of censorship.

The intention of the New World Summit is to bypass the existing terrorist laws, by (1) making use of legal tools to move through a variety of juridical gray zones and (2) creating new ones by the use of art. In the case of the New World Summit in Kochi, the success of this approach was tested on the highest level imaginable: by prosecuting the New World Summit through exactly the same law that is used to list certain organizations.

The first, crucially important tool in this process is located in the summit's capability to move geographically. Almost all countries today have an international terrorist list, and allies tend to copy organizations from these lists on request. For example, the New People's Army, the armed wing of the Communist Party of the Philippines, is placed on the list in the Netherlands at the request of the United States government, not because they were aware of any actual threats themselves. But considering the fact that not all countries are allies and not all geopolitical interests are matching, these lists sometimes do not correspond. Hence an organization such as the People's Mujahedin of Iran, an organization basing itself on an interesting combination of Marxism and Islamism, is considered terrorist in the United States but – after a long juridical fight – no longer in the European Union.

The summit started in Berlin and now continues to travel around the world, in the coming months from India (March 2013) and Belgium (September 2014). Each time it enters into a different juridical and political "zone," and is thus capable of offering a platform to voices that were impossible to host in previous summits. Theoretically, this way the New World Summit – a parliament in flux – at the end of its travel will have been able to host all organizations placed today on the international terrorist lists.

It is because of this reason that I describe the New World Summit as a "democratic supplement." An injection of knowledge suppressed by democratism, brought back into the public sphere by using the second tool that is key in developing this project: the juridically exceptional position of visual art.

The meaning of art's "relative autonomy" may be best highlighted from the perspective of the law. A simple example. In Germany, one of the flags shown in the New World Summit, that of the Kurdistan Workers Party (PKK), may not be shown in public spaces such as the Sophiensaele, the location of the summit. A punishment of six months can be given to anyone who break this law. But because the parliament of the summit does not organize the flags of the listed organizations by geographical location or ideological orientation but based on color it is impossible to consider the showing of the PKK flag to be a "single" offense. I claim the flag to be part of a color scheme, of an abstraction that is created by the organization of all flags together. To take out one flag means to destroy the abstraction that is key to the work as

an installation. It would mean one would destroy my artwork. Yet, for the invited organizations the “truth” of their flags does not diminish because they are organized by color. These two realities, artistic and political, exist simultaneously: the flags are abstract, and they are the total opposite of abstraction at the same time. These two realities do not deny each other: they exist as a consequence of one another. Yet in front of the law, artistic freedom ironically trumps political statement. Philosopher Vincent van Gerven Oei rearticulated the concept of art’s “relative autonomy” in the context of the New World Summit as art’s “relative illegality.” It is this constructive “state of exception” within a juridical framework that can become an important political tool for people who have been subjected to that other “state of exception”: the one that has placed the organizations “outside” of democratism by help of the international terrorist lists. As such, art’s relative illegality may create new forms of public domain, in which new histories may manifest itself – those many histories that have been suppressed from democratism’s consciousness through the international terrorist lists. These are the histories according to the resistance. In the case of Kochi, this strategy still has to prove itself: even though again it became clear that the egalitarian principle of abstraction proved a powerful tool in engineering the State Intelligence in the choreography through which they censored the pavilion.

The true cynic might say that the organizations that spoke during the summit were merely “staged” within an artistic context, as some type of political objet trouvé, a curiosity.

I will answer this cynicism with a concrete example from the summit. When one of the speakers at the New World Summit, Luis Jalandoni, who spoke on behalf of the Communist Party of the Philippines and its armed wing, the New People’s Army, took the floor and said “I’m Luis Jalandoni, and that’s my flag” while pointing to the other side of the room, there was no doubt that for him this space was not political despite the presence of art but that it was political exactly because of art. The space became a political space not simply because I labeled it as such, but because the speakers together with me demanded it to be so. If anything, these organizations were educating us through the urgency with which they brought politics back to the theater. Not as a mere simulacrum of politics in the negative sense of the word, but as the rightful place to speak of the meaning of the concept of representation: to ask the core questions that have made theater and politics each other’s ideal birthplace.



Nadrealistički čin Andréa Bretona nasumičnog pucanja u gomilu zacijelo bi rezultirao sudskom kaznom

Razgovor s **Jakobom Braeuerom**, odvjetnikom i partnerom u tvrtki specijaliziranoj za umjetnička prava Bauschke Braeuer u Berlinu, vodile su **Tea Tupajić** i **Joanna Warsza**.

S engleskoga prevela Marina Miladinov

TUPAJIĆ/WARZA: Od vremena avangardi uvijek se iznova vode rasprave u suvremenoj umjetnosti o tome može li se nešto smatrati umjetnošću ili ne. Debata o performansu skupine Pussy Riot na Sedmom bijenalu u Berlinu ponovo je potaknula slična pitanja. Za nas – kulturne producente – zanimljivo je otkriti tko ima zadnju riječ kada se radi o tome što je ustvari umjetnost. Kako to funkcionira?

BRAEUER: U ustavnoj državi i vladavini zakona suci su ustvari ti koji imaju zadnju riječ, ali i oni su vezani općim zakonskim odredbama koje donosi legislativa. Termin "umjetnost", međutim, gotovo uopće nije definiran takvim odredbama. Sudovi i pravni stručnjaci s vremenom su stvorili određeni okvir za način na koji bi trebalo konstruirati taj termin. Spomenuti okvir uzima u obzir aktualnu situaciju u teoriji umjetnosti i – barem djelomično – ono što društvo prepoznaje kao umjetnost.

TUPAJIĆ/WARZA: Suvremena umjetnost je varljivo i širom otvoreno polje mogućnosti. Danas sve može biti umjetnost ako to na odgovarajući način uklopimo u diskurs i kontekst. Kako se suci i odvjetnici obrazuju o suvremenoj umjetnosti, znaju li što se događa na bijenalima, trijenalima i kvadrijenalima? Prate li prošireno polje definicije umjetnosti?

BRAEUER: Većina sudaca i odvjetnika gotovo nikada se neće baviti slučajem u koji je upletena umjetnost, i stoga je pitanje obrazuju li se po tom pitanju ili ne stvar njihova osobnog interesa. Ali suci su itekako navikli donositi odluke o stvarima u kojima nisu stručnjaci. Ondje gdje je pitanje je li nešto umjetnost od presudne važnosti, a suci su u dvojbi, pogledat će što drugi o tome kažu – vjerojatno će krenuti od Google pretraživanja – ili će zatražiti stručno mišljenje.

U praksi, međutim, čak i kada se neki slučaj tiče umjetnosti, većinom je klasifikacija nečega kao umjetnosti nedvojbeno, ili je pak sasvim irelevantna. Zdrav razum nam kaže da je pitanje o tome je li nešto umjetnost neovisno o vrednovanju tog predmeta kao dobre ili loše umjetnosti. Kada se radi o kaznenom pravu, ono o čemu suci i odvjetnici uglavnom raspravljaju obično nije "je li to umjetnost", nego opravdava li činjenica da je nešto umjetnost određenu vrstu ponašanja.

TUPAJIĆ/WARSZA: Ako sudac ili sutkinja ipak mora odlučiti o umjetnosti, na koju će se definiciju pozvati?

BRAEUER: Postoje definicije, ali nisu baš precizne. Razlog je taj što se radi o strukturalnom problemu: postoji očito proturječje između onoga što sačinjava definiciju i onoga što sačinjava umjetnost. Tu je i činjenica da se teoretičari umjetnosti uopće ne slažu oko jednoznačne ideje umjetnosti, a središnji element suvremene umjetničke produkcije je preći – i proširiti – granice umjetnosti. U pravu pak treba jasno odlučiti o tome odgovara li nešto određenoj definiciji ili ne. Razlog tome je načelo pravne sigurnosti, koje teži maksimalizaciji predvidljivosti ishoda bilo kojeg pravnog spora. Bez predvidljivosti u pravu bi vladali samovolja i despotizam. Predvidljivost u umjetnosti vodi u stagnaciju i dosadu.

U njemačkom pravu osnovne definicije umjetnosti izvode se iz temeljnog prava na slobodu umjetnosti. U mnogim ustavnim državama, a zanimljivo je da su to većinom one s totalitarističkom prošlošću, umjetnost je izričito zaštićena kao temeljno ili ustavno pravo. Ta zaštita premošćuje sve različite dodirne točke između umjetnosti i prava, uključujući zakon o porezima, zakon o prebivalištu, industrijske i trgovinske regulacije i tome slično.

Postoje tri osnovne definicije umjetnosti koje njemački ustavni sud primjenjuje istovremeno: materijalna definicija, formalna definicija i takozvana "otvorena" definicija. Materijalna definicija shvaća umjetnost kao proces slobodnog i kreativnog dizajna koji vizualizira dojmove i doživljava umjetnika. Formalna definicija odnosi se na tradicionalne umjetničke žanrove kao što su slikarstvo, kiparstvo i kazališna umjetnost. Otvorena definicija promatra rezultat umjetničke proizvodnje: umjetnost je ono što je dostupno za neprestanu interpretaciju te sadrži značenja koja idu sve dalje i dalje.

TUPAJIĆ/WARSZA: Vidite li kakvu vezu između totalitarističke prošlosti i ustavno zajamčene umjetničke slobode?

BRAEUER: Naravno. Ustavna prava pojedinaca sama po sebi nisu baš kompatibilna s totalitarističkim idejama, a umjetnost je osobito blisko povezana sa slobodom govora i mišljenja. U Njemačkoj je ustavno tijelo koje je razradilo temeljni zakon nakon Drugog svjetskog rata, 1948. godine, ponovo uspostavilo slobodu umjetnosti kao temeljno pravo, pritom se izričito pozivajući na nacističke progone umjetnika i njihove "degenerirane" umjetnosti. Sloboda umjetnosti nedvojbeno je središnji element slobodnoga društva.

Tupajić/Warsza: A slučaj Pussy Riot u Rusiji?

BRAEUER: Nisam u položaju da procijenim do koje se mjere demokracija i vladavina zakona ustvari primjenjuju u Rusiji. Ali slučaj Pussy Riot svakako ilustrira neke zanimljive aspekte.

Pritom metoda nije prvenstveno zaslužna za pozornost koju je taj slučaj privukao. Prakticiranje vjere jednoglasno je priznato temeljno pravo pa i u Njemačkoj postoji niz kaznenih propisa koji izričito penaliziraju povrede vjerskog osjećaja. Za ono što zakon naziva "činom oskvrnjivanja" na mjestu koje je posvećeno vjerskom štovanju statut predviđa do tri godine zatvora. I pitanje je bi li se njemački sud sasvim odrekao osude uključenih osoba čak i ako su umjetnice i ako je ono što čine umjetnost.

Ono što je zapanjujuće u ruskom slučaju jest oštrina kazne. Pred njemačkim sudom stupanj kazne bi najvjerojatnije bio znatno niži nego u slučaju Pussy Riot.

TUPAJIĆ/WARSZA: Zanimarimo na trenutak činjenicu da se u ruskom slučaju radilo o unaprijed odlučenom procesu. Kako bi se sličnom slučaju pristupilo u Njemačkoj?

BRAEUER: Pogledamo li njemačke odluke na području vjerskih povreda, pronaći ćemo slučajeve bez ikakve umjetničke pozadine koji su doveli do daleko blažih osuda. Tijekom ruskog procesa mediji su navodili njemačke slučajeve s kaznama od 1800 eura za obnaživanje u katedrali, četiri mjeseca zatvora zbog trajnog ometanja bogoslužja u pedeset navrata i 8400 eura za spolno općenje tijekom bogoslužja.

Kao što sam rekao, to su slučajeve bez upletanja umjetnosti. Postoji manje podataka o njemačkim slučajevima gdje je umjetnost vrijeđala religiju, ali vratimo li se unatrag do Weimarske Republike dvadesetih godina 20. stoljeća, kada je sloboda umjetnosti već bila uspostavljena kao ustavno pravo, naići ćemo na čuveni slučaj slikara Georga Grosza. Budući da je bio čisti pacifist, naslikao je raspetog Isusa u vojničkim čizmama i sa gas maskom kako drži u ruci križ s natpisom "Ušuti i nastavi služiti". Grosz je naposljetku oslobođen krivnje, budući da se smatralo da je njegov rad oblik kritike koja je bila legitimizirana time što se radilo o umjetnosti.

TUPAJIĆ/WARSZA: Možete li navesti slučajeve stvari ili postupaka koji su ilegalni, ali to prestaju biti ako se radi o umjetničkom djelu?

BRAEUER: Što se tiče ilegalnih postupaka u smislu kaznenih djela, njemačko pravo predviđa jako malo izričitih umjetničkih povlastica. One uključuju uporabu nacističkih i drugih protuustavnih simbola, kao i raspačavanje propagandnog materijala u ime protuustavnih organizacija. To pomaže ako snimate povijesni film, a i slike Jonathana Meesea uživaju tu povlasticu.

No to nije kraj priče. Temeljno pravo na slobodu umjetnosti primjenjuje se na cjelokupni pravni sustav. Ondje gdje nema izričite povlastice, može barem postojati prostor za argumentaciju kako nešto ne bi trebalo uopće osuditi ili bi barem trebalo dobiti blažu kaznu ako se radi o umjetnosti.

TUPAJIĆ/WARSZA: Tijekom Sedmog bijenala u Berlinu je New World Summit, projekt Jonasa Staala, okupio pravne zastupnike organizacija koje se nalaze na popisu terorista. Oni su govorili u zdanju koje je izgrađeno uz korištenje terorističkih zastava i ustvari je cilj bio preispitati aktualnu uporabu demokracije, koja pod izlikom takozvanog "rata protiv terorizma" koristi netransparentne i upitne postupke uslijed kojih određeni pojedinci i organizacije dopijevaju na popis terorista. Postoji više popisa terorista, ali nitko ne može doznati po kojim su kriterijima sastavljeni. Uporaba zastava i dramaturgija takvog političkog okupljanja nikada ne bi bila moguća u, recimo, zakladi "Rosa Luxemburg". Ustvari, umjetnost se tu okoristila svojom povlasticom za političko okupljanje koje u "normalom svijetu" ne bi bilo dopušteno.

BRAEUER: Staalov projekt je dobar primjer za ilustraciju moći zakonskih povlastica koje uživa umjetnost, ali istodobno pokazuje i njihova ograničenja. Budući da se radilo o dijelu berlinskog Bijenala, postoji velika vjerojatnost da bi sudac smatrao taj projekt umjetnošću. Zastave koje su u drugom kontekstima zabranjene ovdje bi bile dopuštene. Ali osim toga, pripadnost nekoj terorističkoj skupini ili njezino podržavanje – to je zločin u kojemu za umjetnike nema nikakvog izuzeća. Sudjelovanje u umjetničkom događanju ne znači zakonski imunitet za pripadnike terorističkih skupina koji su ondje prisutni. Mogli biste se pokušati pozvati na slobodu umjetnosti u slučaju organizatora projekta, ali malo je vjerojatno da bi sudovi imali previše razumijevanja.

Pravna osnova, ukratko, funkcionira na sljedeći način: ustavno jamstvo sprečava državu da se miješa u umjetnost ako ne postoji neko snažno opravdanje. Granice su ondje gdje umjetnost krši druga temeljna prava.

Naposljetku je to pitanje ravnoteže prava, i ustvari je to ono što dovodi do određenog stupnja nesigurnosti. Nedostatak zakonskih definicija, međutim, također pruža sudovima priliku da razrade i prilagode tu ravnotežu s vremenom. Na primjer, na području клевете i povrede časti stvorene su relativno jasne crte razgraničenja, koje priznaju interese umjetnika, uključujući satiru kao sredstvo umjetničkog izražavanja s jedne strane, ali i dostojanstvo pogođenih pojedinaca s druge.

Povreda temeljnog prava na tjelesni integritet se ipak teško može opravdati slobodom umjetnosti. Krajnje jednostavan nadrealistički čin Andréa Bretona nasumičnog pucanja u gomilu sasvim sigurno bi rezultirao sudskom kaznom.

TUPAJIĆ/WARSZA: Vi ste svakodnevno u dodiru s umjetnošću, ali jeste li ikada morali braniti nešto zato što je umjetnost?

BRAEUER: To se događa, ali većina slučajeva nije u domeni kaznenog prava. Klasifikacija umjetnosti ima drugih prednosti, koje su u praksi mnogim umjetnicima daleko relevantnije za njihov svakodnevni život. Na primjer, ponekad je lakše dobiti vizu ako ste umjetnik. Za umjetničko djelovanje u Njemačkoj nije vam potrebna registracija poslovne djelatnosti. Neke povlastice primjenjuju se samo na određene vrste umjetničkog djelovanja. Na primjer, njemački porezni sustav primjenjuje smanjenu stopu poreza na slike i kipove, ali ne i na fotografije. Likovni umjetnici uživaju povlasticu "droit de suite", koja dopušta umjetnicima da traže dio utrška od buduće prodaje svojih djela.

Zatim je tu, dakako, i autorsko pravo zajedno sa svim pridruženim moralnim pravima. Ono što je tim pravom zaštićeno nipošto nije istovjetno s onime što bismo smatrali umjetnošću i to ponekad dovodi do situacija u kojima je potrebno mnogo uvjeravanja.

TUPAJIĆ/WARSZA: I gdje su tu pukotine i slijepe točke?

BRAEUER: Na primjer, sustavi autorskih prava u kontinentalnoj Europi obično se zasnivaju na općenitom terminu "intelektualnog stvaralaštva". Pogledamo li točno što to određuje stvaraoca, postoji razlika između onoga što je zakonski prihvaćeno i onoga što jasnost i tržište priznaju kao umjetnost.

Englesko običajno pravo pak barata ekskluzivnim skupom zaštićenih stavki, koje obuhvaćaju tradicionalne umjetničke žanrove, među kojima je najnoviji kolaž. To očito vodi u nesigurnost kada su u pitanju suvremena umjetnička djela. U običajnom pravu, gdje postoji identičan skup zaštićenih stavki koje uživaju carinske povlastice, neonski rad Dana Flavina ili neki video rad Billa Viole propast će na ispitu jer se ne može pridružiti nijednom od tradicionalnih žanrova.

S druge strane, postoje područja gdje se autorsko pravo primjenjuje i dospijeva u sukob s umjetničkom produkcijom, osobito kada se radi o deriviranim radovima.

Smatrate li to slijepom točkom donekle je stvar uvjerenja, ali očito je da umjetnici i također tržište imaju mnogo posla s umjetničkom produkcijom koja nije zaštićena autorskim pravom ili je pak protuzakonita upravo zbog autorskog prava.

TUPAJIĆ/WARSZA: Tko je prema zakonu umjetnik? Može li se itko smatrati takvim?

BRAEUER: Pravni sustav drži se one izreke Josepha Beuysa: Svaki čovjek je umjetnik. Sloboda umjetnosti temeljno je pravo svih ljudi. Ona nije vezana za određeno obrazovanje ili diplome. Ne trebate se nigdje registrirati da biste djelovali kao umjetnik ili se nazivali umjetnikom.

Međutim, kada se radi o zakonskim povlasticama, dobro ćete se namučiti kako biste uvjerali vlasti da vam izdaju umjetničku vizu ako ne možete predložiti neki oblik javnog priznanja – diplome, izložbe, recenzije itd. Važno je sljedeće: nije država ta koja odlučuje kome će dati svoje priznanje. Naposljetku, i u pravnom svijetu sud vaše okoline itekako je relevantan.

Umjetnost i zločin

Foto-priča: Joanna Warsza

Od 1969. godine belgijski pisac i satiričar Noël Godin napada poznate ljude krem tortama: među njegovim žrtvama našli su se i Jean-Luc Godard, Nicolas Sarkozy i Bill Gates. U SAD-u mogu vas osuditi za gađanje tortom na čak šest mjeseci zatvora, ali Godin je proglašen nedužnim jer su ga svrstali u nadrealističku tradiciju. Ova foto-priča govori o nečem sličnom toj nadrealističkoj praksi: o akcijama njemačkog umjetnika Hansa Winklera, koje ispituju granice između umjetnosti i zločina.

Art and Crime

A photo story curated by Joanna Warsza

Since 1969, the Belgian writer and satirist Noël Godin has attacked well known people with cream pies: Jean-Luc Godard, Nicolas Sarkozy and Bill Gates have been among his victims. In the US, one can be sentenced for cream pie throwing for up to six months, but Godin was proclaimed innocent, as he was aligned with the surrealist tradition. Similar to the surrealist practice, this photo story presents the actions of German artist Hans Winkler, testing the boundaries between art and criminality.



photo Sven Wiedenhold

Buy a Revolution

U veljači 2010., na ulicama poznate Misijske četvrti u San Franciscu, gdje muškarci često postajkuju nadajući se poslu, Hans Winkler je unajmio desetericu meksičkih nadničara. Winkler je platio te ljude da obuku vojnu uniformu, a oboružao ih je i mačetama i crnim zastavama. Zatim su zauzeli mjesta u stražnjem dijelu kamiona koji ih je odveo u centar grada, pred vijećnicu San Francisca.

In February 2010 on the streets of San Francisco's famous Mission district where men often stand hoping for a job, Hans Winkler hired 10 Mexican day laborers. Winkler paid the men to dress in military uniform, arming them with machetes and black flags. Taking their positions in the back of a pickup truck the men were driven to downtown San Francisco City Hall.

photo p.t.t.red



p.t.t.red in Disneyland

Dana 4. srpnja 1991., nakon parade povodom "Pustinjske oluje" u Disneylandu u Los Angelesu, Hans Winkler i Stefan Micheel prišli su Mikiju Maus i zatražili od njega autogram. Papir koji su mu pružili ustvari je bio ugovor na kojemu je stajalo: "Ja, Miki Maus, prihvaćam da me se ošamari." Kada je Miki Maus potpisao ugovor, Winkler i Micheel su ga ošamarili i pobjegli ravno u Tijuano, Mexico.

On July 4, 1991, after the "Desert Storm" victory parade in Disneyland in Los Angeles, Hans Winkler and Stefan Micheel approached Mickey Mouse asking for an autograph. The paper was actually a legal contract saying "I, Mickey Mouse, accept to be slapped in the face." Once Mickey Mouse signed the contract, Winkler and Micheel slapped him and escaped directly to Tijuana, Mexico.

Granizza



Dana 30. rujna 2004. Winkler je inscenirao prometnu nesreću u kojoj su se sudarila dva automobila, poljski i njemački, usred poljsko-njemačke granice, što je prekinulo promet na nekoliko sati. Do sudara je došlo upravo na mjestu gdje je nemoguće utvrditi čije bi zakone trebalo primijeniti.

On September 30, 2004 Winkler arranged for a car accident between a Polish vehicle and a German vehicle on the Polish-German border that disrupted traffic for several hours. The crash happened at the very place where it was impossible to determine which legislation should apply.

André Breton's surrealist act of firing blindly into the crowd would certainly lead to a conviction

Jakob Braeuer, lawyer and partner in the firm specialized in art law Bauschke Braeuer, Berlin, in conversation with **Tea Tupajić** and **Joanna Warsza**.

TUPAJIĆ/WARSZA: Since the avant-gardes, there have been recurrent discussions in contemporary art on whether something can or cannot be considered as art. The debate around the Pussy Riot performance or the 7 Berlin Biennale raised these questions again. For us – the culture producers – it is interesting to find out who has the final word about what in fact is art. How does it work?

BRAEUER: In a constitutional state, under the rule of law, the judges in fact have the last word, but they are bound by the general statutes that legislation provides. For the term “art”, however, there are hardly any statutory defaults. A certain frame of how to construe the term has been developed by the courts and legal scholars throughout time. This frame pays respect to the state of art theory and – at least partly – to what society recognises as art.

TUPAJIĆ/WARSZA: Contemporary art is a tricky, wide-open field of possibilities. Everything can be art nowadays if it is appropriately put into the discourse and context. How do judges and lawyers self-educate in terms of contemporary art, do they learn about the biennales, triennales and quadriennales? Do they follow the expanded field of defining art?

BRAEUER: Most judges and lawyers are rarely ever involved in a case about art, so whether they self-educate remains a matter of their private interest. But judges are very much used to deciding about matters that they are not experts in. Where the question of art or not art is decisive, and judges have doubt, they would have a look at what others say – probably beginning with a Google search – or obtain an expert opinion.

In practice, however, even when a case involves art, most of the times the classification as art is either beyond doubt, or completely irrelevant. It is common sense that the question art or not art is independent of its valuation as good or bad art. When it comes to criminal law, what judges and lawyers discuss is typically not “is this art”, but rather whether the fact that something is art justifies a certain behaviour.

TUPAJIĆ/WARSZA: So if a judge must decide about art, what definition would she/he refer to?

BRAEUER: There are definitions, but they are not very precise. The reason for this is a structural problem: there is an evident conflict between what constitutes a definition and what constitutes art. Apart from the fact that art theorists are far from agreeing on a uniform notion of art, a central element of contemporary artistic production is to cross – and expand – the borders of art. In law, on the other hand, one has to clearly decide whether something meets a definition or not. The reason is the principle of legal certainty. It aims at maximising the predictability of any legal dispute's outcome. Without predictability in law there would be arbitrariness and despotism. Predictability in art leads to stagnancy and boredom.

In German law, the basic definitions of art are developed from the fundamental right of freedom of art. In many constitutional states, interestingly mostly in ones with a totalitarian past – art is explicitly protected as a fundamental or constitutional right. This protection overarches all the various points of contact that art and law have, including tax law, law of residence, industrial and trade regulations and the like.

There are three basic definitions of art that the German constitutional court jointly applies: A material definition, a formal definition and a so-called “open” definition. The material definition understands art as a process of free creative design that visualizes the impressions and experiences of the artist. The formal definition refers to traditional genres of art such as painting, carving and theatre play. The open definition looks at the result of artistic production: art is what is accessible to continuous interpretation and offers further and further-reaching meanings.

TUPAJIĆ/WARSZA: Do you see any relation between the totalitarian past and the constitutional guaranteed freedom of art?

BRAEUER: Definitely. Constitutional rights of individuals are per se not very compatible with totalitarian ideas, and art is especially closely connected to the freedom of speech and opinion. In Germany, the constitutional convent that developed the fundamental law after World

War II in 1948, in reinstating the freedom of art as a fundamental right, explicitly referred to the NS persecution of artists and their "degenerate" art. Freedom of art is without any doubt a central element to a free society.

TUPAJIĆ/WARSZA: And in Russia with the case of Pussy Riot?

BRAEUER: I am not capable of assessing to which degree democracy and the rule of law actually apply in Russia. But the Pussy Riot case surely illustrates some interesting aspects.

It is not so much the method that provokes the attention that the case received. Practising religion is a univocally recognised fundamental right, and also in Germany there is a set of criminal provisions that explicitly penalise religious offenses. For committing what the law calls "defamatory mischief" at a place dedicated to religious worship, the statute provides for up to three years of prison. And it would be doubtful whether a German court would completely desist from sentencing the involved persons even if they are artists and if what they do is art.

What is most remarkable is the degree of penalty in the Russian case. It is most likely that, before a German court, the degree of penalty would have been significantly lower than in the Pussy Riot case.

TUPAJIĆ/WARSZA: Ignoring for a moment that it was a show trial in Russia, how would a similar case have been treated in Germany?

BRAEUER: If we look at German decisions in the field of religious offences, we find cases without any art background that led to much lower sentences. During the Russian trial, the media circulated German cases with sentences of 1800 Euros for streaking through a cathedral, four months of imprisonment for perpetually disturbing services for 50 times, and of 8400 Euros for sexual intercourse during a service.

Like I said, these are cases without art involvement. There is less evidence of German cases where art insulted religion, but if we go back to the Weimar Republic in the 1920s where freedom of art was already established as a constitutional right, there is a famous case about the painter George Grosz. Clear pacifist he was, he painted Jesus Christ crucified wearing military boots and a gas mask, holding a cross in his hand, with a subline that said "Shut up and keep serving the cause". Grosz was ultimately found not guilty, for his work was seen as a form of criticism legitimised through being art.

TUPAJIĆ/WARSZA: Can you give examples of things or actions that are illegal, except if they are an artwork?

BRAEUER: As regards illegal actions in the sense of criminal acts, German law stipulates only few explicit art privileges. They include the use of NS and other anti-constitutional symbols, and the distribution of propaganda material for anti-constitutional organisations. This helps if making an historical movie, and also Jonathan Meese's paintings fall under this privilege.

But this is not the end of the story. The fundamental right of freedom of art applies to the entire legal system. Where there is no explicit privilege there may be at least room to argue that something should either not be sentenced at all or lead to a lower fine if it is art.

TUPAJIĆ/WARSZA: During the 7th Berlin Biennale the New World Summit, a project by Jonas Staal gathered legal representatives of organisations placed on terrorist lists. They spoke in the architecture building on the use of terrorist flags, and in fact questioned current uses of democracy, which under the so-called 'war on terror' uses non-transparent and tricky and hidden procedures leading to place certain individuals and organisations on terrorist lists. There are several terrorist lists, but one can not learn about the criteria of their making. The use of the flags and the dramaturgy of such a political meeting could never have been possible in, let's say – Rosa Luxemburg Stiftung. In fact, art used its privilege for a political gathering that in the 'normal world' would not be allowed.

BRAEUER: Staal's project is a good example for illustrating the power of the legal privileges for art, but it also shows their limits. Being part of the Berlin Biennale, chances are high that a judge would consider the project as art. Flags that are forbidden in other contexts would be allowed here. But further to this, being a member or supporter of a terrorist group is a crime where there is no exemption for artists. Participation in an art event does not lead to legal immunity for any visiting terrorist group members. You could try to argue with freedom of art for the project organisers, but chances that the courts would be very appreciative are low.

The legal background, in short, works as follows: The constitutional guarantee prevents the state from interfering with art unless there is a strong justification. The limits are where art violates other fundamental rights.

In the end it is a question of balancing rights, and as a matter of fact this leads to a certain degree of uncertainty. The absence of statutory defaults, however, also gives the courts the opportunity to develop and adapt the balance through the time. For example, in the areas of libel and defamation relatively clear lines have developed that recognize the interests of artists including the recognition of satire as a means of artistic expression on the one hand, and of the dignity of affected individuals on the other.

The violation of the fundamental right of physical integrity, in turn, can hardly be justified by freedom of art. André Breton's simplest surrealist act of firing blindly into the crowd would certainly lead to a conviction.

TUPAJIĆ/WARSZA: You work with art on a daily basis, did you ever have to defend something as art?

BRAEUER: That does happen, but the majority of cases do not have a criminal law background. The classification of art leads to a number of other benefits that in practice are much more relevant for many artists on a day to day level. For example, obtaining a visa can be easier if you are an artist. For working as an artist, in Germany, you do not need a business registration. Some benefits apply to certain kinds of artistic

production only. For example, the German tax system applies a reduced VAT rate to paintings and sculptures, but not to photos. And visual artists enjoy the benefits of the "droit de suite" that allows artists to demand a share of future sales of their works.

And then, of course, there is copyright with its attached moral rights. The subject matter protected by this right is far from being identical with what we would consider art, and this sometimes leads to situations where a lot of persuasive effort must be made.

TUPAJIĆ/WARSZA: And where are the gaps and blind spots?

BRAEUER: For example, the continental European author's right systems are typically based on the general term of "intellectual creation". When looking at the details of what defines a creator, there is a difference between what the law accepts and what the public and the market recognize as art.

English common law, in turn, works with an exclusive set of protected subject matter that includes traditional genres of art with the most recent one being collage. This obviously leads to uncertainties when it comes to contemporary works. In customs law, where there is an identical set of subject matter that enjoys custom benefits, a neon work by Dan Flavin and one of Bill Viola's video works failed the test, because they were not attributable to the traditional genres.

On the other hand, there are fields where copyright does apply and gets in conflict with artistic production, especially when it comes to derivative works.

Whether you consider this a blind spot is to some extent a matter of belief, but it is clearly visible that artists and also the market work a lot with artistic productions that are either unprotected by copyright or illegal because of copyright.

TUPAJIĆ/WARSZA: Who is legally an artist? Can anyone claim herself or himself as such?

BRAEUER: The legal system keeps with Joseph Beuys: Everyone is an artist. Freedom of art is a fundamental right for everyone. It is not bound to certain education or diplomas. You do not have to register anywhere to work as an artist or to call yourself an artist.

However, when it comes to legal benefits, you will have a hard time convincing the authorities to issue an artist visa for you if you cannot show any form of public recognition – diplomas, exhibitions, reviews etc. The important point is: It is not the state who decides whom to pay this recognition. In the end, also in the legal world, the judgement of your circle is far from being irrelevant.



Ako je umjetnost pretenciozan koncept, sub- umjetnost to nije **O politici Antanasa Mockusa kao gradonačelnika Bogote**

Joanna Warsza

S engleskoga prevela Marina Miladinov

Kao gradonačelnik Bogote, Antanas Mockus je primjenjivao umjetničke strategije u politici, nazivajući ih sub-umjetnošću: radilo se o posuđivanju postupaka karakterističnih za umjetnost, ali korištenih za postizanje određenih ciljeva u društvu. Mockus je sin kipara, filozof, matematičar i bivši dekan fakulteta, koji je sredinom 90-ih godina prošlog stoljeća, u kolumbijskoj atmosferi neprijateljstva, krvoprolića i trgovine drogom inicirao nenasilnu, performativnu politiku slika i gesta.

Zajedno sa svojim timom uveo je program građanske kulture (*Cultura ciudadana*) koji je iz temelja promijenio paradigmu kreiranja i doživljavanja politike u Latinskoj Americi u smjeru metode građanskog samoobrazovanja koja se zasniva na igri i režiranim situacijama. Cilj projekta *Cultura ciudadana* bio je stvoriti ono što je Mockus nazvao aktivnim građanstvom. Umjesto da naprosto

žive u istom gradu, građani bi trebali taj grad shvaćati kao zajednički projekt, utemeljen na međuovisnosti i uzajamnom poticanju, u kojemu svi sudjeluju. Kao političar i gradonačelnik, Mockus je umjetnost shvaćao ozbiljno, nastojeći je prenijeti u sferu politike. Njegov mandat gradonačelnika kasnije je prozvan "promjenom u Bogoti". Odslužio je dva mandata; tijekom prvoga (1995.-1997.) bio je veoma maštovit i djelovao je s humorom i oprezom, dok se u drugome (2001.-2003.) činio ozbiljnijim te se naposljetku u predsjedničkoj kampanji 2010. godine pokazao ortodoksnim demokratom koji se odbija vidjeti u ulozi mogućeg upravitelja ističući ideju da je vlast u rukama čitavoga naroda. Isprva kao gradonačelnik, a kasnije kao kandidat za predsjednika, koristio se umjetnički obojenim imaginarijem kako bi okončao situaciju "sve po starom" i destabilizirao racionalistički diskurs, razoružao govor mržnje i vladavinu birokracije te također etablirao ideju inovacije, masovnosti i zajedništva.

Mockus je veoma često govorio o suvremenoj umjetnosti kao o izvoru svojih ideja. Zašto mu je točno bila potrebna umjetnost? Prokrijumčario je umjetnički program u politiku, ne tražeći nadahnjujuće sadržaje u crkvi, nego na izložbama, i često je govorio: "Kada se nađem u slijepoj ulici, nastojim učiniti ono što bi učinio neki umjetnik."⁰¹ Tvrdio je da mu kao političaru umjetnost pomaže da uvede ono što je zvao "novim načinima bavljenja politikom." Kada je izabran za gradonačelnika Bogote 1993. godine, pokrenuo je niz akcija 'pod utjecajem umjetnosti'. Budući da je dugo radio kao nastavnik, vjerovao je da zajednica mora shvatiti i slijediti zajedničke interese, uvidjeti mogućnost da nešto izgubi ili dobije. Sa svojim je timom počeo uvoditi igre i simbole koji će vizualizirati zajedničke društvene ciljeve. Jedna od prvih akcija bavila se nasiljem i ubojstvima. Održana je na komunalnom groblju i bila je usredotočena na znatno smanjenje stope ubojstava u gradu iz jedne godine u drugu. Lansirana je snažna kampanja koja je nastojala pokazati da je život svetinja i da nema smisla oduzeti život kako bi se dobio telefon ili automobil. Program se zvao *Život je svetinja* (*La vida es sacrada*) i smanjio je stopu ubojstava za gotovo 50%, postotak koji nijedna statistika ne bi smatrala realnim ili mogućim. Namjera u pozadini akcije na groblju bila je vizualizirati koliko je života spašeno u protekloj godini. Iskoristivši činjenicu da je dio groblja prazan, Mockus je na Dan mrtvih pozvao pet stotina ljudi – što je odgovaralo broju preživjelih – i zamolio ih da uđu u prazne grobnice. Kada su zatim iskočili iz grobova, to je poslužilo kao dokaz o svim tim spašenim životima. Slogan koji je iz toga proizašao bio je: "Potrudimo se da ti grobovi ostanu prazni".

Druga izvedbena akcija bila je povezana s nedostatkom vode. Bogota je morala početi drastično štedjeti vodu. Mockus je stoga odlučio pojaviti se na televiziji u kratkom video-spotu, gdje je prikazan polugol kako se tušira i zatvara vodu dok se sapuna, tražeći od građana Kolumbije da čine isto. Za samo dva mjeseca ljudi su počeli trošiti manje vode i manjak vode sada je 40% niži nego što je bio prije nestašice. Ova i druge akcije mogle bi se smatrati dijelom onoga što je Mockus nazvao "super-građanstvom". Ustvari, na početku karijere često se pojavljivao u kostimu Supermana.

Mockus je od umjetnosti i umjetnika preuzeo i koncept lobiranja za izgubljene ciljeve, kao i oslobođenje od poštivanja normi. Umjetnici često tvrde kako ne mare za osobne interese, nego za društvo u cijelosti i njegov boljitak. Mockus je odveo umjetničko preispitivanje stagnacije u smjeru društvenog eksperimenta i nove vrste političke prakse: ranjive i naivne, ali konstruktivne. Mnoge akcije koje je pokrenuo igrale su na kartu osjećaja krivice, koji je tipičan za kolumbijske kršćane, a koji je on nazivao samokontrolom i uzajamnom podrškom. Te su emocije postale oruđem gradskog planiranja s ciljem povećanja broja građana koji poštuju zakon, kao i njihove sposobnosti i volje da utječu

01 Ulomak iz razgovora s Antanasom Mockusom u okviru maratonske manifestacije "Truth is concrete" na festivalu steirischer herbst.

jedni na druge takvim ponašanjem u skladu sa zakonom, potičući komunikaciju i izražajni potencijal. Jedan od najznakovitijih primjera reguliranja građanskog ponašanja izvan zakonskog sustava kazni i nagrada bila je uspostava mreže knjižnica. U suradnji s povjesničarom Jorgeom Orleandom Melom gradska vijećnica je utemeljila knjižničarski program u nasilnim četvrtima Bogote. U središtu zločina i siromaštva nove, velike knjižnice postale su zonama sigurnosti i društvenog oslonca. Kada su građani željeli posuditi knjigu, knjižničari bi im je dali s jednom jedinom opaskom: "Vjerujem da ćeš je vratiti" – bez članske iskaznice, bez birokracije, bez novčanog depozita. To je bio Mockusov način vizualizacije mehanizma u kojemu povjerenje djeluje kao jedna od najsnažnijih društvenih spona. Vjerovao je da će, budeš li nekome vjerovao, strah od gubitka povjerenja regulirati njegovo ili njezino ponašanje. Ishod je bio manji broj ukradenih knjiga nego u bibliotekama klasičnog tipa.

Vjerojatno najveća prijetnja u Bogoti bila je količina vatrenog oružja, osobito u slamovima i siromašnim predgrađima. Kako bi se uhvatio u koštac s tim problemom, Mockus je pribjegao operaciji koja izričito pripada umjetničkom instrumentariju. Naime, u Bogoti je bilo dopušteno nositi oružje u svim javnim prostorima radi samoobrane. To je pravilo imalo samo jednu iznimku. Jedinu kontekst u kojemu je vatreno oružje bilo protuzakonito bile su javne manifestacije. Mockus je stoga pribjegao duchampovskoj gesti i proglasio sve što se događa na ulicama, u parkovima i ustanovama javnom manifestacijom, a grad je postao umjetničko djelo i *ready-made*. Takvim jednostavnim obratom u *objet trouvé* oružje je uklonjeno s ulica grada.

Gradska vijećnica paralelno je pokrenula još jednu akciju uprizorenu poput igre: program kojim se nudila zamjena oružja za poklone, a oružja-igračaka za druge vrste igračaka. Djeca su povremeno dolazila i mijenjala ih. Zanimljivo je da je program ispočetka djelovao više kao simbolički čin, ali je zatim postao stvarnom strategijom, budući da ga je sve više građana prihvaćalo i uključivalo se u njega. Nasilje, najgora pošast u Latinskoj Americi, razoružano je s pomoću radosti, a djeca su postala primarni adresati takvih akcija: uputila im se poruka neka savjetuju roditelje da se odreknu oružja.

U kasnijoj fazi svog gradonačelničkog mandata, kada je dublje ušao u analizu načina na koji funkcionira nasilje, Mockus je zamijetio snažnu simboličku komponentu i povukao je paralele između umjetnosti i terorizma. Bio je to rezultat njegovih opservacija da počinitelji često nastoje uzburkati emocije kako bi proizveli neko značenje, baš kao što to čine i umjetnici. S druge strane, od umjetnosti je naučio da se stvarno djelovanje može u potpunosti zamijeniti simboličnom gestom. Kako bi sublimirao nasilje i pretvorio ga u simboličnu gestu ili metaforu, Mockus je izmislio "cjepivo protiv nasilja". Bila je to radionica gdje se od ljudi tražilo da nacrtaju lica onih koji su ih povrijedili na balone, koje su zatim probušili i uništili.

Postoji, međutim, granica na koju simboli u stvarnosti uvijek nailaze: da je netko pucao u njegov zaštitni prsluk, u kojemu je izrezao oblik srca, simbolizam bi se time završio, sukobio bi se sa stvarnošću i Mockus bi naprosto umro.

Naposljetku, možda je najvažniji primjer posuđivanja od umjetnosti i njezine primjene u konkretnim društvenim situacijama bio onaj kada su ulični pantomimičari nadzirali promet zajedno s policajcima. Klasični tip pantomimičara u Bogoti su oni koji vas slijede, oponašajući hod prolaznika. Mockus je upotrijebio njihov potencijal kako bi kritizirao putem oponašanja te je pozvao dvadeset profesionalnih pantomimičara da nadziru poštivanje semaforiskog signala. Građani su prihvatili program do te mjere da je još 400 osoba prošlo kroz stručnu umjetničku obuku i postalo pantomimičarima. Kada je ideja prvi put obznanjena, novinari su željeli znati hoće li pantomimičari moći

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naplaćivati kazne, a ako ne – kako to uopće može funkcionirati. To je bilo upravo ono što je Mockus želio ispitati: kako se može odgojno utjecati na ljude bez straha od kazne? Kada bi vozači parkirali automobile na pločnicima ne poštujući pješачki prostor, pantomimičari bi im prišli i prekorili ih pokazujući im žute ili crvene kartone kao u nogometu. Posramivši se, vozači bi počeli poštivati druge. Crveni i žuti kartoni ubrzo su postali sredstvo kojim su se ljudi općenito koristili kako bi reagirali na neki pogrešan postupak.

Čini se da je Mockus shvaćao ono što je Chantal Mouffe opisala kao središnju ulogu koju emocije i strasti imaju u stvaranju kolektivnog političkog identiteta. Vjerovao je da bi današnja politička strategija ljevice, umjesto da stavlja interese i razum ispred osjećaja i strasti, trebala ugraditi i te neopipljive, afektivne čimbenike.

U situaciji u kojoj uobičajeni način provođenja politike podbaci, zajedno sa zakonom kao regulacijskim aparatom, treba potražiti druge poticaje. Upravo tu mogu se mobilizirati kvalitete koje su specifične za umjetnost, kao što su ranije spomenuti ludizam, performativnost i proizvodnja simboličkog suviška.

Neki su Mockusovu politiku smatrali ljevičarskim populizmom, drugi šalom na račun vodstva; neki su ga smatrali dobrohotnim i naivnim političarom, drugi pak samozvanim moralnim autoritetom. Međutim, njegov način kuriranja grada sastojao se u onome što se od umjetnosti često očekuje: u rekontekstualizaciji i razumijevanju individualnih i zajedničkih interesa, u tome da građani shvate sustav kojega su dio i da preuzmu odgovornost.

Štoviše, strategija kojom se poslužio kako bi to postigao i sama je specifična za umjetnost. Suvremena umjetnost ne bavi se nužno samo stvaranjem umjetničkih predmeta, nego i stvaranjem situacija u kojima može doći do interakcije među građanima i interakcije oko političkih pitanja, koja se na taj način razumiju i analiziraju. Budući da je Mockus potjecao iz pedagoške struke, koristio je umjetnost i politiku ilustracije i reprezentacije kako bi potaknuo distribuciju znanja. A sprega znanja s jedne strane te humora i vedrine s druge dala je ljudima mogućnost i otvorenost da potaknu i prihvate promjenu.

U brojnim intervjuima i također kao sudionik 7. Berlinskog bijenala Mockus je izjavio: "Općenito postoje dva pristupa: ili se umjetnost proizvodi radi umjetnosti, što je često bio slučaj u razvijenom kapitalizmu, ili se pak smatra povlaštenim jezikom društvene promjene. Ja vjerujem da možete zadržati elitističku koncepciju umjetnosti i istodobno se upustiti u društveni eksperiment. Želio bih zadržati ambicije umjetnosti i učiniti ih javnima." Mockus je također radio na privilegiranju pedagogije i distribucije znanja, pridajući im simboličku vrijednost umjetnosti: "Čudno je što društvo, kako se čini, cijeni umjetnost daleko više od pedagogije. Pogledate li sav trud koji se ulaže na akademskom polju, ubrzo ćete primijetiti da je pedagogija nekakva bezoblična i nedovoljno cijenjena zona, dok se umjetnost nalazi na drugom kraju spektra. Obje discipline imaju zadovoljstvo razumijevati, podučavati i razvijati nova značenja i mogućnosti. Čak i ako ste istaknuti, iskreni i lucidni u pedagogiji, još uvijek će vas cijeniti manje nego da ste umjetnik."

Nakon završetka drugog gradonačelničkog mandata Mockus se nastavio aktivno baviti politikom te se 2010. odlučio kandidirati za predsjednika, i to samo četiri mjeseca prije izbora. U jednom trenutku popularnost mu je rasla i imao je dobre izgleda. Međutim, tada je postao veoma neortodoksan u svojim simboličkim metodama, gotovo na granici samoubojstva, ističući kako nam u demokraciji nije potreban lik vođe i vizualizirajući njezin karakter jednakosti i holističnosti. U televizijskoj emisiji tijekom predsjedničke kampanje zamolili su ga da sjedne u velik drveni stolac. Odbio je i na taj način ostavio "prazan prijestol", iskazujući time svoju želju da stolac vođe ostane prazan, pokazujući

da je izvršna vlast ustvari u našim rukama, samo ako to želimo. Također je javno zatražio od svoga protivnika da mu vodi kampanju: "Predložio sam mu sljedeće: ja ću voditi Vašu kampanju, a Vi moju, pa ćemo svi na neki način biti na dobitku."⁰² Plakati Mockusove kampanje prikazivali su obojicu kandidata kako bi ilustrirali politički spektar: "Najbolji prijatelj mi je rekao: Antanas, ovo je odviše makijavelističko. Ja sam mislio suprotno. Bila je to komunikacijska strategija. Ljudi su morali na uravnotežen način doznati za prijedloge."⁰³ Ali društvo za to nije bilo spremno: takvo političko ponašanje predstavilo ga je kao odviše slabog i zbrkanog, a tome se pridružila i dijagnoza Parkinsonove bolesti.

Mockus je ustvari jedan u dugom nizu političkih izvođača u kolumbijskoj politici. Taj je niz krenuo od vođe Liberalne stranke Jorgea Eliécera Gaitána Ayale, koji je ubijen 1948. godine. On je organizirao Marš tišine, okupivši velik broj ljudi u povorku koja je šutke hodala ulicama Bogote. Kada su se okupili na najvećem gradskom trgu, njegovi politički protivnici očekivali su da će održati velik govor ili izjaviti nešto poput: "Ubijmo oligarhe koji upravljaju ovom zemljom." Međutim, on nije rekao ništa i ljudi su se razišli kućama u tišini. Sedamdesetih godina prošlog stoljeća jedna je gerilska skupina po imenu "Pokret 19. travnja" ili "M-19" također koristila simbole kao oružje. Jedan od njezinih prvih političkih nastupa sastojao se u krađi Bolívarova mača iz Nacionalnog muzeja, nakon čega su održali govor u kojemu su opravdali svoj postupak koji je zvučao poput nekog avangardnog manifesta. Tvrdili su kako su predmeti u muzejima mrtvi i kako ukradeni mač treba vratiti javnosti kako bi postao aktivnim simbolom trajne političke borbe u Latinskoj Americi. Lucas Ospina, kolumbijski umjetnik i politički komentator, smatra da je Mockus ostavio iza sebe ponešto nostalgije za svojom politikom, ali njegova politička praksa, nažalost, gubi utjecajnost. Njegova osobnost bila je važna, kao i njegovo izvorno litavsko ime i njegovo imigrantsko podrijetlo. On je gringo, stranac koji je oduvijek živio i živjet će kao Kolumbijac. Mogli bismo ga usporediti s umjetnikom, strancem koji je došao izdaleka kako bi promijenio život lokalnih ljudi, osobom koja je smještena u kontekst, ali mu ne pripada u potpunosti. Važno je sagledati fenomen Mockusa u kontekstu zemlje kao što je Kolumbija, koja je dugi niz godina bila zatvorena za imigrante – tijekom Drugog svjetskog rata i nakon njega.

Danas Mockus razvija metodu "Coprovisionarios", stratešku metodologiju koja se zasniva na njegovim akcijama. Koristi je kao instrumentarij u savjetovanju s drugim gradovima Južne Amerike i čak Europe o njihovim specifičnim problemima. Jedan od gradova s kojima se savjetovao bio je Stuttgart, u vezi s debatom na temu Stuttgart 21, o razvojnom projektu željeznice i urbanizma koji je izazvao brojne prosvjede. Vjerojatno je ono što bi gradska vijeća mogla naučiti iz "promjene u Bogoti" shvaćanje politike koje uključuje umjetnost, i to umjetnost koja nadilazi puko dekorativnu i kapitalističku funkciju i lišena je svoje autonomne zone sigurnosti. Za Mockusa umjetnici nikada nisu bili zagonetka ili *Leistungsschau*, dekoracija, turistička atrakcija ili dobro društvo u salonima Europske zajednice ili čak Vatikana. On je umjetnike smatrao partnerima u projektima gdje inovativne ideje rezultiraju djelovanjem, u procesu organizacije društva, u pretvaranju igre osobnih interesa u strastveno političko djelovanje.

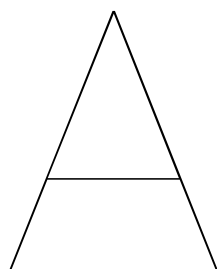
⁰² Isto.

⁰³ Isto.

If art is a pretentious concept, sub-art isn't

On the politics of Antanas Mockus as a Mayor of Bogotá

Joanna Warsza



s the mayor of Bogotá, Antanas Mockus employed artistic strategies in politics calling them sub-art: an appropriation of procedures specific to art, but applied for reaching a specific goal in society. Mockus, the son of a sculptor, is a philosopher, mathematician, and former university dean who initiated a non-violent, performative politics of images and gestures in the mid-1990s in a Colombian aura of hostility, bloodshed, and narco-traffic.

Together with his team he introduced a program of citizen culture called *Cultura ciudadana*, which fundamentally shifted the paradigm for making and experiencing politics in Latin America towards a civic self-education method based on play and staged situations. The goal of *Cultura ciudadana* was to create what Mockus calls active citizenship. Instead of just living in the same city, citizens should perceive it as a common project based on mutual interdependence and emergence that all of them take part in. As a politician and mayor, Mockus was someone who treated art seriously and tried to transport it into the realm of politics. His mayoral term was later called the "Bogotá change." He served two terms as a mayor, during the first term (1995–1997) he was very imaginative, acting with humour and cautious, in his second term (2001–2003) he seemed more solemn, and finally in the presidential campaign in 2010, he became an orthodox democrat, refusing to see himself as a possible governor, forging the idea that power is in the hands of all the people. First as a mayor and later as a presidential candidate he employed an art-driven imaginary to suspend "business as usual" in order to destabilize rational discourse, disarm hate speech and bureaucratic rule, and to bring about an understanding of emergence, multitude and community.

Very often Mockus referred to contemporary art as a reservoir of his ideas. Why exactly did he need art for? He smuggled an art agenda into politics, seeking inspiring content not in church but in an exhibition, often saying: "When

I am trapped, I try to do what an artist would do.”⁰¹ He claimed that for him as a politician, art was helpful in opening up what he would call “new ways of doing politics.” Elected mayor of Bogotá in 1993, he started to implement a number of ‘artistically driven’ actions. Being a long-term teacher, he believed that the community has to understand and pursue its common interests, realize its ability to lose and gain something. Together with his team he started to introduce games and symbols, which would visualize the common social goals. One of the first actions dealt with violence and murders. It was held at the communal cemetery, and focused on the very significant drop in the city’s homicide rate from one year to the next. A powerful campaign was launched saying that life is sacred, and that taking a life to get a phone or a car is worthless. The program was called *Life is Sacred* (La vida es sacrada) and led to a near fifty-percent reduction in the murder rate, a figure that no statistics would have found realistic or possible. The intention behind the cemetery action was to visualize how many lives were saved the previous year. Taking advantage of the fact that part of the cemetery was empty on the holiday of the Day of the Dead, Mockus invited five hundred people – equivalent to the number of survivors – and asked them step inside the empty crypts. When they jumped out of the tombs, it served as evidence of all the lives saved. The slogan that came out of this was “Let’s keep those graves empty”.

Another performative action was connected with water shortages. Bogotá needed to drastically save on water. Mockus decided to appear on TV in a short commercial where he was half naked taking a shower and turning off the water as he soaped, asking Colombian citizens to do the same. In just two months people started to use less water, and water usage dropped forty percent lower than before the shortages. This and other actions can be seen as part of what he called ‘a super-citizenship’. In fact, at the beginning of his career, he would often appear in a Superman costume.

Mockus also borrowed from art and artists the concept of lobbying for lost causes and dispensation from observing norms. Artists often claim not to look to their interests but to the totality of society and its well-being. He pushed artistic questioning of the status quo in the direction of social experiment and a new type of political practice: vulnerable, naive but constructive. Many of Mockus-initiated actions played with the Colombians’ Christian feeling of guilt, what he otherwise called self-control and mutual support. The emotions became a tool in the city agenda to increase the number of law-abiding citizens and their capacity and will to influence each other through law-abiding behaviour, and fostering communication and the potential for expression. One of the most meaningful examples of regulating citizen behaviour outside of the law systems of sanctions and gratification was the establishing of a network of libraries. Together with historian Jorge Orleando Melo, the town hall founded a library program in violent districts of Bogotá. In the midst of crime and poverty, the new large libraries became zones of safety and social reliance. When people wanted to take out a book, librarians handed over the volumes with one remark: “We trust you to return it” – with no registration, no bureaucracy, no deposits. That was Mockus’s way of visualizing the mechanism of how trust – as one of the strongest social binds – works. He believed that if you trust someone, the fear of losing trust will regulate their behaviour. As a result, less books were stolen than in the regular libraries.

Probably the most threatening issue in Bogotá was the number of firearms, especially in the slums and poor neighbourhoods. To fight the problem Mockus used an operation explicitly belonging to the arts toolbox. Namely, in Bogotá it was legal to carry weapons in all public spaces as a means of self-

⁰¹ From a conversation with Antanas Mockus within the frame of the “Truth is concrete” marathon camp of the steirischer herbst Festival.

defence. The rule had only one exception. The only circumstance where guns were illegal was at public spectacles. Mockus then applied a Marcel Duchamp-like gesture and declared everything that happens in the streets, parks and establishments a public spectacle, a city as an artwork and as a ready-made. With this simple objet trouvé twist, weapons were made unwelcome on the streets.

Complementarily the town hall created yet another playful staged situation – a program offering to exchange guns for gifts, and toy guns for different kinds of toys. Kids would come and exchange them every now and then. And surprisingly, the program, which at the beginning was more of a symbolic act, became a real strategy as a larger number of citizens accepted it and became involved in it. Violence, the worst of plagues of Latin America, was dismantled by joy, and kids became the primary addressers of such actions: they were addressed to advise parents to give up on arms.

Later in his mayoral term, getting deeper into the analysis of the way violence works, Mockus noticed a strong symbolical component and drew parallels between art and terrorism. This stemmed from his observations that perpetrators often aim at stirring emotions in order to produce a meaning, as artists do. On the other hand, what he learned from art is that a real action can be completely substituted by a symbolical gesture. In order to sublimate the violence into a symbolical gesture or a metaphor, Mockus invented “vaccination against violence”. It was a workshop situation in which people were asked to draw the faces of the people that had hurt them on balloons, which they then popped and destroyed.

There is, however, a limit to the reality that the symbols are always confronted with: if somebody had shot his bullet-proof jacket, in which he cut a heart inside, the symbolism would be over, it would crash with the real and Mockus would simply die.

Finally, maybe the most significant example of appropriating art and applying it directly in a concrete, social situation was when street mimes, standing next to policemen, controlled traffic. The classical mime in Bogotá is one who follows you and walks in the direction of the passer-by. Mockus picked up on their potential of carrying out criticism through imitation and invited twenty professional mimes to help control streetlight traffic. The program was accepted by the citizens to such an extent that an additional 400 people went through professional art training and became mimes. When the idea was initially announced, journalists asked whether the mimes would be able to hand out fines, and if not – how could that work. And that was precisely Mockus’s challenge: how can one be educated without the fear of punishment? When drivers parked their cars on sidewalks not respecting the space for pedestrians, the mimes would reproach them by showing yellow or red cards like in a soccer game. Once they felt ashamed, the drivers would respect others. The red and yellow cards soon became a tool commonly used by people to react if somebody did something wrong.

Mockus seemed to have understood, what Chantal Mouffe describes, as the central role emotions and passions have in the creation of collective political identities. He believed that instead of putting interests and reason before sentiments and passions, the political strategy of the left today should be incorporating precisely those intangible, affective factors.

In situations where the usual way of doing politics, together with law as regulatory apparatus fails, other incentives need to be sought. It is exactly here that the assets specific to art, such as the above described ludicity, performativity and symbolical surplus production could be mobilized.

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Some saw his politics as leftist populism, jocular leadership, a good-willed naïve politician or self-proclaimed moral authority. But his mode of curating a city was to produce what art is often intended to produce: a re-contextualization and understanding of both individual and common agendas, making citizens see the system they are a part of, and taking responsibility.

Moreover, the strategy he used to achieve this is in itself specific to art. Contemporary art engages itself not necessarily only in creating art objects, but in staging situations in which interaction among citizens and interaction on political issues can occur, be understood and analysed. Coming from pedagogy, he used art and the politics of images and representation for enforcing the distribution of knowledge. And knowledge combined with humour and joviality gave people a possibility and openness to bring about and accept change.

In many interviews and also as a participant of the 7th Berlin Biennale Mockus said: "There are two general approaches: producing art for art, which was often the case in late capitalism; or seeing it as a privileged language for changing the society. I believe that you can retain the elitist concept of art and at the same time be involved in a social experiment. I'd rather retain the ambitions of art and make them public." He also worked towards privileging pedagogy and knowledge distribution, giving them the symbolic value of art: "It's strange that the society seems to value art a lot more than pedagogy. If you look at all the effort made in the academic field, you'll soon notice that pedagogy is an amorphous, underestimated zone, while art sits on the other extreme of the spectrum. Both disciplines share the same pleasure of understanding, teaching, and developing new meanings and possibilities. Being notable, truthful, and lucid in pedagogy, one is still valued less than as an artist."

After ending his second term as mayor, Mockus continued his political practice and in 2010 decided to run for president only four months before the election. At a certain point, his statistics were rising and he had a very good

chance. But then he became very unorthodox in his symbolic methods, almost suicidal, stressing that in democracy we don't need the figure of a leader and visualizing its equal and holistic character. On a TV talk show during the presidential campaign he was asked to take a seat in a large wooden chair. He refused, thus leaving "an empty throne," manifesting his wish that the leader's chair be vacant, and showing that executive power in fact lies in our hands if only we want it to. He also publicly asked his opponent to run a campaign for him: "I proposed to him: I make a campaign for you, you make a campaign for me and in some way, everybody wins."⁰² Mockus campaign posters depicted both candidates to illustrate the political spectrum: "My best friend said: Antanas, it's too Machiavellic. I thought the contrary. It was a communication strategy. People had to know in an equilibrated way about the proposals."⁰³ But society was not ready: such political behaviour made him too weak and too confused, along with the diagnosis of Parkinson's disease.

Mockus is in fact in a long chain of political performers in Colombian politics. Starting from the leader of the Liberal Party, Jorge Eliécer Gaitán Ayala, who was murdered in 1948. He organized a March of Silence bringing together a lot of people who marched the streets of Bogotá in silence. When they convened in the city's largest square, his political enemies expected him to make a big speech or a statement like: "Let's go and kill the oligarchs of this country". But he didn't say anything and people returned to their homes in silence. In the 1970s a guerrilla group called 19th of April Movement, or M-19, also used symbols as weapons. One of their first political performances was stealing Bolívar's sword from the National Museum, and delivering a justification speech that sounded like an avant-garde manifesto. They claimed that the objects in museums were dead and that the stolen sword had to be restored to the public realm and to become an active symbol of the ongoing political fight in Latin America. Lucas Ospina, a Colombian artist and political commentator, claims that Mockus left behind a bit of nostalgia for his politics, but his political practice is unfortunately losing impact. His personality was important, along with his original Lithuanian name and his immigrant origin. He's a gringo, a foreigner who has and always will live as a Colombian. One could compare him to an artist who is a stranger coming from outer space to transform the lives of the natives, a person who's set in a context but does not completely belong. It is important to understand the phenomenon of Mockus in the context of a country like Colombia, which remained off limits for immigrants for many years – during WWII and after.

Today Mockus is creating the "Coprovisionarios method", a policy methodology based on his actions. He uses it as a toolbox to consult other cities in South America and even Europe about addressing their specific problems. One of the cities he consulted was Stuttgart concerning the Stuttgart 21 debate – a railway and urban development project evoking a lot of protests. Probably what the European city councils could learn from the 'Bogotá change' was the understanding of politics, which includes art beyond its decorative and capitalist function and taken out of its autonomous safety zone. For Mockus, artists were never puzzles of a *Leistungsschau*, a decoration, a tourist attraction, or good company at EU or even Vatican saloons. He saw artists as partners in the think-and-do thanks, in the process of organizing society, in turning the game of personal interests into a passionate political action.

⁰² *ibid.*

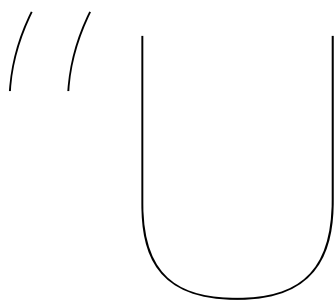
⁰³ *ibid.*



Ulovi besanu ribu

Juli Reinartz

S engleskoga prevela Marina Miladinov



lovi besanu ribu" suvremena je i obrnuta parafraza strategeme iz *Knjige Južnoga Qija*: "Uskomešaj vodu kako bi ulovio ribu". *Knjiga Južnoga Qija* sadrži trideset šest strategema koji prepredeno prikazuju vojne operacije, formalizirajući ih kako bi se nadišla razina očitoga i opisujući strateško ratovanje. Ovaj članak

posuđuje te strategeme kako bi prikazao umjetničke prakse koje su spremne nadići vlastiti žanr i stvarati umjetnost na drugim društvenim područjima i kroz njih, brišući razlike između umjetnosti i života. Međutim, postoji ključna stvar u kojoj se umjetničke prakse razlikuju od vojnih strategema, a to je njihov nedostatak definiranog cilja. Dok je *Knjiga Južnoga Qija* izgrađena na dispozitivu klasičnog ratovanja koje ima jasne ciljeve i jasno definiranog neprijatelja, umjetnička praksa danas je suočena s dodatnim problemom koji treba riješiti: osim vlastitih strategema, ona bi također morala definirati tko je njezin neprijatelj. Koja područja i snage valja zauzeti? Tu se izokreće odnos operacije i cilja: zamišljene kao prakse, strategeme u *Knjizi Južnoga Qija* istražuju kako djelovati, a da se ne zna koga treba poraziti. Umjesto da snažno nastupe protiv neprijatelja, one snažno nastupaju protiv žanrova koje žele prevladati i naspram teritorijâ na koje žele prijeći, bez obzira na to što bi ondje mogle zateći kad jednom stignu. Zamišljene kao prakse, one prije svega postaju skup spekulacija, prikupljajući snage za budućnost.

Uz strategeme iz *Knjige Južnoga Qija* posudila sam dva koncepta iz biologije i starogrčke mitologije – kamuflažu oponašanjem ili prikrivanjem i trojanskoga konja – kako bih proširila ovu skicu budućih umjetničkih praksi.

1. PREKRIJ DRVO LAŽNIM CVJETOVIMA omogućuje jednoj praksi da djeluje prikrivena drugom. Ova strategema pretpostavlja dvostruki plan rada, u kojemu jedna praksa treba biti učinkovita i proizvesti brze rezultate (cvjetove), dok druga može tiho rasti u tajnosti (drvo). Ona funkcionira oslanjajući se na ljepotu cvijeta, koji privlači svu pozornost. "Prekrij drvo lažnim cvjetovima" potencijalno je ugodna ili društvena praksa, budući da omogućava uspostavu aktivnosti koje ne moraju odmah biti produktivne. Može se koristiti kako bi se oduprlo očekivanjima učinkovitosti u proizvodnji umjetnosti i umjesto toga naglasilo želju i čisti utrošak vremena kao središnje parametre. Ova strategema poigrava se odnosom rada i vremena, odnosno idejom produktivnosti. Subverzivna je, ali ne po tome što se odupire

produktivnosti, nego po višku produktivnosti, po tome što potihlo stvara više nego što je bilo planirano. U sjeni druge proizvodnje omogućeno je odvijanje neusmjerenog djelovanja. Strategema "prekrij drvo lažnim cvjetovima" slični razmnožavanju kukavice: ona povjerava mladunče krilima drugoga kako bi mu osigurala dobru prehranu. Na primjer, norveška koreografinja Ingri Midgard Fiksdal nedavno je predložila da se za produkciju komada *Stormen* u Umjetničkom centru Henie-Onstad komad jednom dnevno isproba u punoj duljini (1 sat), a da se ostalo vrijeme probe iskoristi za zajedničko čitanje.

2. POSUDI LEŠ KAKO BI USKRISIO DUŠU odnosi se na veoma staru praksu u kojoj se potiče integracija s nekom postojećom ustanovom kako bi se uskrisio njezin koncept naspram trenutnog stanja stvari, izokrećući način na koji ta ustanova djeluje (aktivizam) ili pak čineći vidljivim uzajamni odnos ustanove i estetskih vrijednosti (institucionalna kritika). U obama slučajevima koristi se stapanje društvenih i umjetničkih parametara kako bi se dovele u pitanje konvencije i zakoni. Većinu vremena djeluje se legalno i u tom smislu ova se strategema razlikuje od trojanskoga konja. Umjesto obmane teži se praksi transparentnosti ili vidljivosti te odanosti demokratskim vrijednostima i okvirima političkog djelovanja.

Danas danska skupina Superflex koristi modificiran oblik te prakse koji bi se mogao nazvati "Posudi tijelo kako bi rodio dušu / Hiperlegalnost". Umjesto integracije s nekom javnom ustanovom, skupina potpisuje ugovore s raznim ustanovama i preko tih ugovora nameće im strane postupke. Dotične ustanove prisiljene su na neko vrijeme promijeniti način djelovanja kako bi ispunile ugovor. Praksa Superflexa s pomoću pravnog okvira rađa novu administrativnu dušu. Hiperlegalnost proizvodi vremenski ograničenu novu ustanovu.

3. KAMUFLAŽA OPONAŠANJEM ILI PRIKRIVANJEM je umjetnička praksa koja primjenjuje teorijski koncept oponašanja. Ova strategema razlikuje se od biološkog fenomena kamuflaže po svome cilju. Dok je u prirodi njezina svrha osigurati opstanak već postojećem stvorenju, kada se primjenjuje u umjetnosti, ona se često koristi kako bi se proizvelo novo tijelo (skup znanja, rada, osoba). "Kamuflaža oponašanjem ili prikrivanjem" teži stapanju s pozadinom, ali ostaje strana njezinim načelima i jezgri. Ona koristi pozadinu kako bi dobila resurse. Razlikuje se od strategeme "prekrij drvo lažnim cvjetovima" po svojoj neposrednosti i produktivnosti, jer tijelo koje se kamuflira ima jasnu namjeru i opseg djelovanja. "Kamuflaža oponašanjem ili prikrivanjem" ništa ne rađa, nego uspostavlja protutežu u odnosu na ideologije autonomije umjetnosti u društvu. To bi se moglo ilustrirati jednim od novijih projekata izraelskog umjetnika Omera Kriegera, u kojemu je postao Državnim umjetnikom Izraela, djelujući s državnim obvezama, zahtjevima i resursima. Meta napada u tom projektu nije konkretno funkcioniranje neke ustanove, nego sâm odnos političkog i umjetničkog angažmana.

"Kamuflaža oponašanjem ili prikrivanjem" veoma je tajna strategema i ne otkriva se dok ne ispunji svoju misiju. Upravo u njezinoj tajnovitosti nalazi se potencijal za sljedeću strategemu, a to je

3.a. HIPERKAMUFLAŽA, strategema u kojoj se kamuflirani objekt čak može stopiti sam sa sobom i izdati vlastitu srž. Hiperkamuflaža je dvostruki agent bez uvjerenja, ona nema istine ni prijatelja, to je čisto taktičko djelovanje koje nepredvidljivo zauzima strane, prema sasvim trenutnoj situaciji. Koliko god revolucionarna bila ova strategema u dezintegraciji

subjektivnosti, s njome treba postupati pažljivo, budući da se može osvetiti. Mogla bi izgubiti moć kada višestruko stapanje ne dopusti angažman na bilo kojem od teritorija. U tom slučaju ona ostaje beskonačan potencijal bez materijalne ekspanzije.

4. USKOMEŠAJ VODU KAKO BI ULOVIO RIBU je jednostavna praksa kojom se nastoje izbjeći postojeće linije razdora ili sukoba – ideološkog kao i fizičkog – i stvoriti nova usmjerenja. Ona u osnovi teži pomutiti lance mišljenja, navesti ribu da izgubi orijentaciju i prisiliti je na nove oblike navigacije. Ujedinjeni narodi je, na primjer, koriste kao strategemu s pomoću koje nameću mikro-sukobe u situacijama rata ili građanskog rata kako bi se pozabavile izvornim problemom. Postoji niz obrazovnih programa koji također prakticiraju strategemu “uskomešaj vodu kako bi ulovio ribu” u svrhu razvoja razmišljanja izvan zadanih okvira, iznalaženja novih koncepata i interdisciplinarnog pristupa znanosti ili ekonomiji. To je trenutak u kojemu ova praksa otkriva svoj dvoznačni karakter: dok za Marcusa Miessena pomutnja koja se unosi u konvencionalne oblike ponašanja i koncepte naposljetku dovodi do prodora u pragmatičnu politiku (administrativnu verziju politike) i proizvodi političku politiku (koncepte koji kritički dovode u pitanje okvir onoga što se smatra političkim) te stoga predstavlja subverzivnu praksu po sebi, strategema “uskomešaj vodu kako bi ulovio ribu” mogla bi se s druge strane pretvoriti u jednostavno kreativno sredstvo ekonomije koja uglavnom djeluje na osnovi interdisciplinarnih, inovativnih i proizvoljnih modela moći. U trenutku kada se poveže sa specifičnim, ciljno orijentiranim praksama kao što je “posudi leš kako bi uskrisio dušu”, ona ustvari teži stvaranju ustrajnog otpora, a time i interakcije između naizgled nepovezanih društvenih skupina. To bi moglo biti sasvim očito u projektu Christofa Schlingensiefela pod nazivom “Foreigners Out!”. Njemački redatelj smjestio je dvanaest osoba koje traže azil u kontejner, nakon čega je, posudivši format *reality showa* Big Brother, pozvao publiku da glasanjem svakoga dana izbaci jednu osobu i deportira je u zemlju iz koje je došla. U projektu “Foreigners Out!” tema, naslov i scenografija dovoljno su globalni i provokativni da uvuku različite ljude u kazališni/politički aparat u kojemu se najvjerojatnije neće slagati, ali će možda stupiti u interakciju.

5. UPRI PRSTOM U MURVU ISTODOBNO PROKLINJUĆI ROGAČ pravi je ratni stroj. Praksa se sastoji u uporabi analogija i insinuacija u vezi s neprijateljem, s pomoću kojih se za X tvrdi da je Y. Koristeći tu jednostavnu operaciju, ustvari se artikuliraju misli prije nego optužbe. “Upri prstom u murvu istodobno proklinjući rogač” ne generira nagađanja i spekulacije samo o tome tko ili što bi mogao ili moglo biti rogač, nego također o tome što bi mogla postati murva. Strategemu “upri prstom u murvu istodobno proklinjući rogač” treba shvatiti doslovno: kada, na primjer, želite govoriti o kapitalizmu, ali iz više razloga očito imenovanje kapitalizma nema smisla, dilema se rješava uvođenjem srodnih pojmova, na primjer, recesije, bogatstva, rada ili intelektualnog vlasništva. Prijedlog da se govori o tim temama umjesto o onoj izvornoj pridonosi kompleksnosti i otvara svjež diskurzivni teritorij. Neosobna primjena strategeme “upri prstom u murvu istodobno proklinjući rogač” pretvara laganu namjernu konceptualnu pogrešku u kolektivni proces spekulacije. Ona može prevariti želju za reprezentacijom njezinim vlastitim oružjem.

6. OBMANI NEBO KAKO BI PREŠAO OCEAN djeluje na osnovi pretpostavke da previše transparentnosti (Yang) može prikriti prave razloge. Poziva se na pogrešno čitanje nekog djela, prikriva se stvarna namjera i iznosi se na vidjelo čitava debata ili tema. Po tome se razlikuje od strategeme "upri prstom u murvu istodobno proklinjući rogač": ne zanimaju je samo fenomeni, nego i diskurzivne i političke pozicije oko njih. Ona ironizira protivnike prisvajajući ideologije. Ta praksa najbolje se koristi u naslovima koji iskazuju već poznatu ili pretjerano jasnu poziciju dok je sam projekt potajice usmjeren na drugi cilj. Nužno je da naslov na neki način pogađa kako bi strategema "obmani nebo kako bi prešao ocean" djelovala; on mora biti kamen spoticanja i preusmjeriti pozornost. To se može vidjeti u radu skupine The KLF "The Manual", koja navodno sadrži upute kako objaviti vrhunski glazbeni hit, a ustvari razotkriva način na koji glazbena industrija surađuje s neoliberalnom poduzetničkom ideologijom.

7. TROJANSKI KONJ je starogrčka mitološka strategema koja navodi metu da pozove neprijatelja u sigurno zaštićen prostor. Ona je napad na pretpostavljeni konsenzus i konvencije na području znanja ili angažmana. Sposobna je probiti se kroz konvencije tako što će prošvercati neku umjetničku praksu na druga društvena područja prividno stvarajući umjetničko djelo (drvenog konja). Kako bi umjetničko djelo postalo pravi trojanski konj, ono mora u nekom trenutku osloboditi smrtonosne elemente i prestati biti umjetničko djelo, bilo na ideološkoj, bilo na praktičnoj razini. To razotkrivanje predstavlja stratešku razliku u odnosu na "kamuflažu oponašanjem ili prikrivanjem" i čini ovu strategemu prepoznatljivom kao koncept neodredive dinamike. Projekt The Robin Hood Asset Management Cooperative, koji je pokrenuo finski teoretičar političke ekonomije Akseli Virtanen, od početka je zamišljen kao trojanski konj: ovaj protu-investicijski fond za ugrožene radnike koji oponaša investicije najkompetentnijih investitora na njujorškoj burzi, započeo je kao umjetnički projekt za izložbu Documenta 13 u Kasselu. Budući da djeluje na burzi, očekuje se da će postati učinkovit na području financija i pretvoriti privatni profit u zajedničke resurse. To bi mogao biti njegov smrtonosni potencijal. "The Robin Hood Asset Management Cooperative" jasno pokazuje uzajamni učinak strategeme "trojanski konj". To bi mogla biti istinski spekulacijska strana trojanskog konja kao prakse: korištenje umjetničke produkcije kako bi se ušlo pod kožu nekom drugom području i na taj način artikuliralo želje koje prelaze granice jednog ili drugog teritorija. Praksa trojanskog konja katalizator je za pitanje tko je neprijatelj.

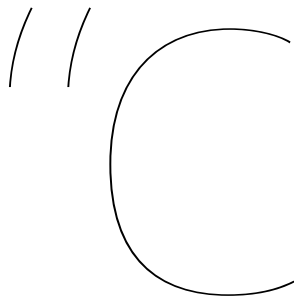
8. AKO SVE DRUGO PROPADNE, POVUCI SE ima samo jedno pravilo: ako vidiš da ćeš izgubiti, povuci se! Argumentacija je jednostavna: ako ne možeš dovršiti oni što si naumio, postoje samo tri opcije: predati se, ući u kompromis ili pobjeći. Predaja znači poraz, kompromis je napola poraz, ali bijeg ostavlja sve buduće prilike otvorenima; on oduzima protivniku slavu pobjede. Međutim, onkraj tih impresivnih argumenata, strategema "ako sve drugo propadne, povuci se" ostavlja vas s otvorenim pitanjem: ako se kod svih ovih praksi radi o ukidanju granica između umjetnosti i života, pri čemu se slijedi specifična procedura koja nadilazi parametre i fond znanja s različitih područja, koji su to sigurni teritoriji na koje se one mogu povući? Je li umjetnost siguran teritorij za umjetnost? Propitujući svoje povlačenje, praksa "ako sve drugo propadne, povuci se" iznova promišlja način na koji se umjetnost bavi društvom.





Catch A Sleepless Fish

Juli Reinartz



atch a Sleepless Fish" is the inverse paraphrasing of "Disturb the Water to Catch a Fish", the 20th stratagem of the *Book of Southern Qi*. The *Book of Southern Qi* contains thirty-six stratagems, dastardly illustrating military operations, formalizing to go behind the lines of the obvious, describing tactical warfare. This article lends these stratagems in

order to sketch artistic practices that would go behind their own lines, perform art in or through other social fields and diffuse divisions between art and life. However, the point in which military stratagems are different from artistic practices is crucial: it is their lack of definition of an objective. While the *Book of Southern Qi* is built on the dispositif of classical warfare that has a clear goal and a clear enemy, artistic practice today has an additional problem to solve: next to defining its stratagems, it would also have to define who is the enemy. Which fields and forces are to be claimed? Here, the relationship between operation and objective inverts: thought as practices, the stratagems of the *Book of Southern Qi* research how to act without knowing whom to beat. Instead of being firm on the enemy, they are firm on the lines they want to go behind and the territories they would like to enter, whatever one might meet once having arrived. Thought as practices, they first and foremost become a body of speculations, raising energies for the future.

Additionally to the stratagems of the *Book of Southern Qi*, I borrowed two concepts from biology and from Greek mythology – Camouflage by Mimesis or by Cripsis and the Trojan Horse – in order to extend this sketch of future artistic practices.

1. DECK THE TREE WITH FALSE BLOSSOMS makes one practice operate under the radar of another one. It sets up a double agenda for a work in which one practice has to be efficient and produce fast results (the blossom) and the other one can grow silently underground (the tree). It functions through the pretention of beauty by the blossom which catches all the attention. "Deck the Tree with False Blossoms" is potentially an enjoyable or social practice since it allows setting up activities without making them instantly productive. It can be used to resist expectations of efficiency within artistic production and to emphasize instead desire and the pure time that has been spent as central parameters. It plays with the relation of labour and

time or the idea of productivity. It is subversive not through resisting productivity but through overproductivity, through silently breeding more than what was planned. In the shade of another production, it allows for undirected action to take place. "Deck the Tree with False Blossoms" resembles the cuckoo's breeding: entrusting the baby to foreign wings so that it will be fed well. Norwegian choreographer Ingri Midgard Fiksdal, for example, recently proposed for the production *Stormen* at Henie-Onstad Art Centre to practice the full length of the piece (1 hour) every day once and to use the rest of the rehearsal time to read together.

2. BORROW A CORPSE TO RESURRECT THE SOUL names a very old practice to integrate with an existing institution and to engage either in resurrecting its concept in opposition to the current state of affairs, twisting the way the institution operates (Activism), or making visible the intertwined relationship of the institution and aesthetic values (Institutional Critique). In either way, it uses the confusion of social and artistic parameters to put in question conventions and laws. Most of the times it operates in legality and, in that way, differs from the Trojan Horse. Rather than a deception it is a transparency or visibility practice, staying true to democratic values and frameworks for political action.

Today the Danish group Superflex is using a deviated form of this practice which could be called "Borrow a body to give birth to a soul / Hyperlegality". Instead of integrating with one public institution, the group makes contracts with various institutions and through these contracts superimposes foreign procedures onto them. The concerned institutions then have to change their course of affairs for a while in order to fulfil the contract. The practice of Superflex gives birth to a new administrative soul through a juridical framework. Hyperlegality produces a timely limited new institution.

3. CAMOUFLAGE BY MIMESIS OR BY CRIPSIS is an artistic practice applying the theoretical concept of a simulacrum. It differs from the biological phenomenon of camouflage in respect of its objective. Whereas in nature it provides survival for an already existing creature, when applied in arts it is often used to create another body (of knowledge, of work, of people). Camouflage by Mimesis or by Cripsis practices to blend into a background while being alien to its principles or core. It uses the background to gain resources. It differs from Deck the Tree with False Blossoms in its directedness and productivity; the camouflaging body has a clear intention and range of action. Rather than a breeding, Camouflage by Mimesis or by Cripsis is a counter practice to ideologies of autonomy of art in society. This might become obvious in the recent project of Israeli artist Omer Krieger in which he became an artist of the State of Israel working with the state's obligations, demands and resources. The point of attack in this project is not the concrete functioning of one institution but the relationship between political and artistic engagement per se.

Camouflage by Mimesis or by Cripsis is very secretive and does not show itself before having completed its mission. Its secrecy is where it holds the potential for

3.a. HYPERCAMOUFLAGE, the tactic by which the camouflaging object can even blend into itself and betray its own essentials. Hypercamouflage is a double agent without beliefs, it does not have truth or friends; it is a pure

tactical action unpredictably taking sides in relation to every current situation. As revolutionary as it is in its disintegration of subjectivity, it is to be handled with caution, for it can backfire. It might become impotent when the multiple blending in does not allow for engagement with any of those territories. In that case, it stays an endless potential without material expansion.

4. DISTURB THE WATER TO CATCH A FISH is a simple practice to deviate the existing lines of division or conflict – ideological as well as physical – and generate new orientations. It basically practices to confuse chains of thinking, make the fish lose orientation and force new navigations. The United Nations, for example, use it as stratagem to superimpose micro-conflicts on war or civil war situations in order to deal with the source issue. There are a number of educational programs that also practice “Disturb the Water to Catch a Fish” for thinking outside the box, to come up with new concepts and an interdisciplinary approach to science or economy. This is the point where the practice bares its ambiguous quality: where, for Markus Miessen, confusing conventional behaviours and concepts adds up to breaking through pragmatic politics (an administrative version of politics) and producing political politics (concepts that critically challenge the framework of what is considered to be political) and is, thus, a subversive practice in itself, “Disturb the Water to Catch a Fish” might, on the other side, turn into a simple creativity tool for an economy operating majorly on interdisciplinary, innovation-driven and arbitrary power models. The moment at which it links to specific, goal-oriented practices such as “Borrow a Corpse to Resurrect the Soul” is when it actually intends to create a persistent dissensus and, thereby, create an interaction between presumably unconnected social groups. This might be quite apparent in Christoph Schlingensiefel’s project “Foreigners Out!”. The German director placed 12 asylum-seekers in a container and, borrowing the format of the Big Brother reality show, invited the Austrian population to vote one person out every day and to deport them to their native country. In “Foreigners Out!” the subject, title and set up are global and provoking enough to involve different people within a theatrical/political apparatus in which they, most likely, will not agree but maybe start to interact.

5. POINT AT THE MULBERRY TREE WHILE CURSING THE LOCUST TREE is a war machine. It practices to use analogies and innuendos to speak about the enemy and, in that way, claims X to be Y. With this simple operation, it actually articulates thoughts rather than accusations. Point at the Mulberry Tree While Cursing the Locust Tree creates guesses and speculations not only about who or what might be the potential Locust tree but also about what a Mulberry tree can become. “Point at the Mulberry Tree While Cursing the Locust Tree” is to be taken literally: when one would, for example, like to talk about capitalism but, for diverse reasons, the obvious naming of capitalism does not make sense, the dilemma is solved through bringing up related phenomena, for example recession, wealth, labour or intellectual property. Through proposing to speak about those instead, the original topic gains in complexity and brings up a fresh discursive territory. An impersonal application of Point at the Mulberry Tree While Cursing the Locust Tree turns a slight intentional misconception into a collective process of speculation. It tricks the desire for representation with its own weapons.

6. DECEIVE THE HEAVENS TO CROSS THE OCEAN assumes that too much transparency (Yang) can hide true reasons. It claims a false reading of a work covers an actual intention and makes a whole debate or topic appear. This is where it differs from "Point at the Mulberry Tree While Cursing the Locust Tree": it is not merely interested in phenomena but in the discursive and political positions around it. It ironizes its opponents by appropriating ideologies. This practice is used preferably in titles that proclaim an already known or over-clear position while the project is secretly hitting another target. It is necessary for the title to be in some way affecting for "Deceive the Heavens to Cross the Ocean" to work, it has to be a stumbling block and redirect attention. This can be seen in The KLF's "The Manual" which pretends to be a handbook to make a number one hit and thereby lays open how the music industry and neoliberal entrepreneurial ideology work together.

7. TROJAN HORSE is a Greek mythological stratagem that causes a target to invite a foe into a securely protected space. It is an attack on the presumed consensus and conventions in a field of knowledge or engagement. It is capable of breaking through conventions through smuggling an artistic practice into other social fields, making it appear as an artwork (the wooden horse). For the artwork to become a real Trojan Horse, it needs to release lethal elements at one point and cease to be an artwork, either on an ideological or on a practical level. Its revelation marks the strategic difference to Camouflage by Mimesis or by Cripsis and makes it recognizable as a concept with undefinable dynamics. The Robin Hood Asset Management Cooperative, initiated by Finnish political economy theorist Akseli Virtanen, has from the very beginning been thought of as a Trojan Horse: this counter investment fund for precarious workers that mimics the investments of the most competent investors in the New York Stock Exchange was launched as an artistic project at Documenta 13 in Kassel. Operating on the stock market, it is expected to become efficient within the field of finance and transform private profits into shared resources. This might be its lethal capacity. The Robin Hood Asset Management Cooperative makes clear the mutual effect of a Trojan Horse stratagem. This might be the truly speculative side of the Trojan Horse practice: using artistic production for getting into the skin of another field and, by that, articulating desires that would have exceeded one or the other territory. The Trojan Horse practice is a catalyst for the question who is the enemy.

8. IF ALL ELSE FAILS, RETREAT has only one rule: if you are about to lose, retreat! The argumentation is simple: if you cannot complete what you have set out to do, there are only three options: surrender, compromise or escape. Surrender means defeat, compromise means half defeat, but escape keeps all future chances open, it takes away the glory of victory from the opponent. However, beyond these striking arguments "If All Else Fails, Retreat" leaves you with a question: If all these practices are dealing with the breaking of the boundaries between art and life, each one pursuing a specific procedure that breaks through the parameters and bodies of knowledge of the different fields, what are the secure territories for them to retreat to? Is art a secure territory for art? By questioning its retreat, the practice of If All Else Fails, Retreat resettles art's engagement in society.



Knesset, Jerusalem



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Knesset

Glasnogovornik Knesseta

Ur. br. 01414412
Jeruzalem, 5 Av 5772
24. srpnja 2012.

G. Omer Krieger
Fax 077-7870201

Poštovani gospodine Krieger,

U skladu s ovlastima koje su mi dane po Državnom zakonu o umjetnicima 5772-2012, a na temelju Vaše kandidature i izbora od strane zakonom predviđene većine zastupnika u Knesetu, koji su se o tome izjasnili tajnim glasovanjem kako je predviđeno i određeno spomenutim Zakonom, proglašavam Vas imenovanim na položaj Državnog umjetnika na mandat od pet godina.

Prije stupanja u službu od Državnog umjetnika se očekuje da položi prisegu pred Knesetom.

Želim Vam mnogo uspjeha u radu,

Srdačno,

MK Reuven (Rubi) Rivlin
Glasnogovornik Osamnaestog saziva Knesseta

Na znanje: Generalni direktor Knesseta, g. Dan Landau

The Knesset

Speaker of the Knesset

Ref. 01414412
Jerusalem, 5 Av 5772
24 July 2012

Mr. Omer Krieger
Via Fax 077-7870201

Dear Sir,

By virtue of the authority vested in me by the State Artist Law 5772-2012, based on the submission of your candidacy and following your election by the appropriate majority of Knesset members by way of secret ballot, all as required by and set forth in the Law, I hereby announce your appointment to the post of the State Artist. This appointment is for a five year term.

Before entering on the execution of his office, the State Artist shall take an oath before the Knesset.

I wish you success in your endeavors.

Regards,

MK Reuven (Rubi) Rivlin
Speaker of the Eighteenth Knesset

cc. Knesset General Director, Mr. Dan Landau



"Ja sam mislio vrabac Lena
štapić Lena mačka u usta
med usna iščašiti zid grudica
recka prst Ludwik grmlje
visi vise usta Lena sam tamo
čajnik mačka štapić ograda
cesta Ludwik pop zid mačka
štapić vrabac Ludwik visi
štapić visi vrabac visi Ludwik
mačka objesit ću", **ili: Kako
je Gombrowicz razotkrio
nezrelost filozofije**

Vincent W. J. van Gerven Oei

S engleskoga prevela Marina Miladinov

“Nezamislivo je preduzeti sve zahteve Daseina
i istovremeno piti kafu uz kifle za užinu.”
— Witold Gombrowicz⁰¹

Politici i filozofiji zajednička je težnja sistematizaciji. Ono što se u politici često lamentira kao progresivna birokratizacija i prikrivanje revolucionarnog žara, u filozofiji se predstavlja kao dozrijevanje sustava: metafizičkog, ontološkog ili nekog drugog. Taj polagani proces dozrijevanja, koji se navodno događa tijekom filozofova života, organiziran je oko uspostave koncepata, ideja i pojmova, i svaka filozofija koja se ograđuje od tog procesa akumulacije ili rasta obilježena je kao djetinjasta ili nezrela, nedovoljno stasala da govori u vlastito ime. Kao i u politici, u filozofiji možemo govoriti o procesima legalizacije, koji su povezani s pitanjem dozrijevanja (“dosezanja punoljetnosti”) kao jamstva njezine unutarnje konceptualne stabilnosti. Međutim, čini se da ti procesi, kada god se netko na njih poziva, naviještaju budućnost paralize i amnezije koja prati filozofsku zrelost i naposljetku starost: budućnost u kojoj definitivno više ne bi bilo filozofske mladosti.

Umjetnost i književnost često se prizivaju kako bi se poduprla ta filozofska nastojanja oko sistematizacije i legalizacije: koriste se kako bi se obznanile nove istine, pokopali lažni idealizmi ili pak ponudile inovativne paradigme. No umjetnost ponekad aktivno djeluje protiv tih tendencija filozofske aproprijacije, ili čak sâma sebe zbog nje proglasi nezakonitom. Upravo je to slučaj s opusom poljskog autora Witolda Gombrowicza, koji je proveo većinu svog radnog života u progonstvu u Argentini, osobito s njegovim posljednjim romanom *Kozmos* (1965.), koji je, prema riječima Hanja Berressema, “jedna od najpotpunijih dekonstrukcija detektivskog romana u suvremenoj književnosti.”⁰² Uporaba filozofski obilježene riječi “dekonstrukcija” u ovom opisu trebala bi nas upozoriti na ono o čemu se ustvari radi u Gombrowiczovu književnom pothvatu.

Jedan od prvih filozofa koji se osvrnuo na Gombrowiczovo djelo bio je Gilles Deleuze. On je već 1966. spomenuo *Kozmos* u bilješci uz esej “Platon i simulakrum”,⁰³ koji se bavi Nietzscheovim “preokretanjem platonizma”, odnosno “uzdizanjem simulakruma i afirmiranjem njihovih prava među ikonama ili među kopijama”.⁰⁴ Bio je to jedan od prvih koraka u Deleuzeovu pokušaju da razradi filozofski sustav koji će provesti takvo preokretanje, gdje će se idealnost zamijeniti beskonačnim regresom simulakruma pod vladavinom “chaosmosa”. Taj esej kasnije će preraditi u dodatak svojoj *Logici smisla*. U šestom poglavlju tog djela, naslovljenom “Serijalizacija”, Deleuze razvija formalni pristup konceptu serije. Kako bi tu konceptualizaciju učinio supstancijalnom, Deleuze između ostalog mobilizira specifične fragmente Gombrowiczova romana *Kozmos*. “Serijalna forma” – obznanjuje Deleuze u kurzivu – “nužno se ostvaruje u simultanosti najmanje dviju serija.”⁰⁵ Ali kako to misliti simultano, i što ako filozofska simultanost Deleuzeove serijske forme ne odgovara u potpunosti književnoj simultanosti Gombrowiczovih dviju serija? To bi bilo prvo pitanje.

Deleuze u *Kozmosu* ne nalazi samo specifičnu seriju koja će mu poslužiti kao građa za filozofsku obradu; čini se da se barem dio njegova filozofskog nastojanja da “preokrene Platona” oslanja na detektivske moduse koje su istražili Gombrowicz i drugi. To postaje očitim na kraju njegova uvoda u knjigu *Razlika i ponavljanje*, gdje kaže sljedeće:

⁰¹ Witold Gombrowicz, *Dnevnik I* (1953-1956), prev. Petar Vujičić (Beograd: Prosveta, 1985.), str. 327.

⁰² Hanjo Berressem, “Witold Gombrowicz: *Cosmos*: The Case of the Hanged Sparrow”, *The Polish Review* 36/2 (1991.), 145-159, ovdje 145. Vidi također: Hanjo Berressem, *Lines of Desire: Reading Gombrowicz's Fiction with Lacan* (Evanston: Northwestern University Press, 1998.).

⁰³ Gilles Deleuze, “Platon i simulakrum”, prev. Sana Perić, *Čemu* 18.16/17 (2009.), str. 123-135, ovdje 130, bilj. 8.

⁰⁴ Deleuze, “Platon i simulakrum”, str. 131; usp. isti, *Logique du sens* (Pariz: Les Éditions de Minuit, 1969.), str. 292.

⁰⁵ Deleuze, *Logique du sens*, str. 50.

Knjiga o filozofiji trebala bi dijelom biti sasvim specifična vrsta detektivskog romana, a dijelom neka vrsta znanstvene fantastike. Što se tiče detektivskog romana, želim reći da koncepti trebaju intervenirati sa svojim zonama prisutnosti kako bi riješili lokalne situacije. Oni se i sami mijenjaju s problemima. Imaju svoje utjecajne sfere gdje, kao što ćemo vidjeti, djeluju u suodnosu s "dramama" i služeći se određenom "okrutnošću". Među njima mora postojati koherentnost, ali ta koherentnost ne smije potjecati od njih samih. Oni moraju dobiti svoju koherentnost izvana.⁰⁶

Dakle, Deleuze sugerira da ta filozofska strategija djeluje kao "sasvim specifična vrsta detektivskog romana", naime ne takva u kojoj bi postojao teleološki poriv da se razotkrije neka Istina ili Ideja, ili gdje bi postojala nekakva konceptualna zaključenost; Deleuzeova filozofija ne slijedi logiku klasičnog detektivskog romana, nego prisvaja Gombrowiczovu "dekonstruiranu" varijantu kao protuotrov protiv metafizičkih zaključenja prošlosti.

Koherentnost filozofije ovisi o "drami", a njezini koncepti nužno, iako ne uvijek namjerno, djeluju s određenom "okrutnošću", i to okrutnošću koja se, kao što ćemo vidjeti, ne bi trebala interpretirati u smislu (meta)-fizičkog nasilja, nego kao ono što prati svaku negaciju. Štoviše, filozofija uvijek proizlazi odnekud "izvana", možda odande odakle se mogu navoditi, citirati i preuzimati "drame" i "okrutnost". Tako se čini da za Deleuzea filozofija nikada ne ovisi u potpunosti o sebi: drugim riječima, ona je *uvijek nezrela*. To ne znači da je ona po definiciji nesustavna; to znači da njezina sustavnost uvijek dolazi pod uvjetom nekoga "izvana", da ona uvijek ima potpuni nadzor nad samom sobom, da je uvijek nekako maloljetna.

Ta nezrelost ne pripisuje se nekom dijelu filozofskog pothvata koji bi bio sigurno ograničen na radove određenih "neozbiljnih" filozofa ili čak "anti-filozofa"; ona je endemski svojstvena filozofiji utoliko što se filozofija neprestano suočava s vlastitim djetinjstvom. Bilo bi moguće steći taj osjećaj nezrelosti iz drugog Gombrowiczova romana, *Ferdydurke*.⁰⁷ U predgovoru prvom španjolskom izdanju izjavio je kako je "nemoguće" naći formu za nezrelost, budući da ona izmiče potpunoj konceptualizaciji: "Ni znanost ni umjetnost, kao ni bilo koji drugi medij kulturnog izražavanja, ne dopuštaju čovjeku da neposredno iskaže vlastitu nezrelu stvarnost, osuđenu na vječnu šutnju."⁰⁸ Činjenica da Gombrowicz smatra kako je nemoguće pronaći odgovarajuću formu za izražavanje nezrelosti trebala bi odaslati znak upozorenja čitavom filozofskom pothvatu, budući da dopušta da neizrecivo ostane njegov integralni dio. Ta nezrelost nikada se ne može neposredno razotkriti i stoga je istodobno uvjet pod kojim ovaj pokušaj djeluje.

Pokušat ćemo izmamiti na vidjelo specifične načine na koje se Gombrowiczovo djelo odupire filozofiji, nikada ne dopuštajući da ga se potpuno i sustavno obuhvati. Taj otpor, možda čak i proturječje, djeluje na više razina, od lingvističkih i semiotičkih do karakterizacije likova. Ono što slijedi iščitavanje je tih vrsta otpora koje Kozmos pruža protiv filozofske apropijacije, uz istodobno preispitivanje njegovih filozofskih tangenata i recepcija: prvenstveno Deleuzeove apropijacije Kozmosa, upotpunjene njegovim čitanjem Michaela Goddarda u djelu *Gombrowicz, Polish Modernism, and the Subversion of Form*; a zatim i Berressemova lakanovskog pristupa.⁰⁹ Ovaj potonji je ustvrdio: "Balansirajući između forme (koja predstavlja zrelost i kastraciju) i fluidnosti (koja predstavlja nezrelost i polimorfnu izopačenost), Gombrowiczovo djelo smješteno je negdje između Lacana, Deleuzea i

06 Gilles Deleuze, *Différence et répétition* (Pariz: Presses universitaires de France, 1968.), 3. Avital Ronell je preuzela Deleuzeove detektivske strategije u knjizi *Crack Wars* (Urbana & Chicago: University of Illinois Press, 2004.), str. 64.

07 Nažalost, opseg ovog članka ne ostavlja mi mjesta za cjelovitu interpretaciju romana *Ferdydurke*, uključujući Gombrowiczovo ekstenzivno bavljenje nezrelošću.

08 Predgovor prvom španjolskom izdanju romana *Ferdydurke* (Buenos Aires: Argos, 1946.), <http://www.literatura.org/wg/ferdywg.htm>

09 Jean-Pierre Saglas, u: *Gombrowicz, un structuraliste de la rue* (Pariz: Éditions de l'éclat, 2011.) također primjećuje sličnost s djelom Michela Foucaulta, što se, međutim, ne može potkrijepiti nijednim od Foucaultovih sačuvanih tekstova (61). Sâm Gombrowicz samo jednom spominje Foucaulta, u svome *Dnevniku III* (1961-1966), str.249.

Guattarija.¹⁰ Ostaje otvoreno pitanje je li ta filozofska "smještenost" toliko stabilna kao što to pretpostavljaju gore navedeni autori, dopušta li nam to njezina forma i do koje mjere Gombrowicz oboružava svoje djelo protiv takvog pozicioniranja. Nadam se da ću, istražujući ova pitanja, stići do preciznije karakterizacije načina na koji književnost, kao i umjetnost općenito, zauzima nezakonitu poziciju (neko "izvana") čim se razmatra s gledišta filozofije, čak i takve koja je prijateljski nastrojena prema književnosti, kao što je Deleuzeova. Ta karakterizacija indirektno ima tu prednost, što nezrelost same filozofije (koja se ignorira, niječe, uživa ili čak formalizira (kao u Badiouovoj formuli "Ne postoji filozofska istina")) u njoj još više dolazi do izražaja.

Witold Gombrowicz opisuje svoj roman *Kozmos* kao "crn, prvenstveno i prije svega crn, nešto poput crne uzburkane struje pune virova, zastoja, poplava, crne vode koja nosi puno otpada, i neki čovjek zuri u nju – zuri u nju, ponesen njome – nastojeći je dešifrirati, razumjeti i povezati je u neku vrstu cjeline...."¹¹ Roman započinje s tim crnilom, s onime što bi se u nekom drugom filozofskom registru možda moglo nazvati "noć svijeta". Susrećemo se s dvojicom protagonista, studentima Witoldom i Fuksom, koji hodaju seoskom cestom u Poljskoj, u blizini Zakopana, usred ljetne žege.

Znoj, ide Fuks, ja za njim, nogavice, potpetice, pijesak, vučemo se, vučemo, zemlja, kolnik, zgrudani pijesak, svjetlucaji staklastih kamičaka, bljesak, žega zuji, drhtava vrelina, sve se crni od sunca, kućice, plotovi, polja, šume, ta cesta, taj marš, otkud, kako, duga je to priča [...] i sve bliješti od sunca, ali crno, crnilo drveća, sivilo zemlje, prizemno zelenilo biljaka, sve prilično crno. (145-146)

Sunčeva svjetlost koju doživljava Witold ne obasjava svijet kao kod Platona, nego ga zavija u crnilo: sve se crni od sunca, sve bliješti od sunca, ali crno. Prvi, zastrašujuće traumatičan predmet koji se pojavljuje iz tog prasnijeta, iz "gustina i prosvjetlina" u grmlju, jest "vrabac koji je visio na žici. Objješ." (146). Fuks i Witold jedva se uspijevaju otrgnuti od tog prizora, ali ubrzo nakon toga pronalaze prenoćište u blizini, spremajući se navodno učiti za ispite. Ondje se susreću s drugom anomalijom koja će dominirati ostatkom romana, koja nije predmet, nego odnos. Jer Witold odmah zamjećuje "čudnu unakaženost usta", uzbudljiv i senzualan "mračan prolaz" (148) domaćice Katasje, a nakon toga i vezu između njezinih deformiranih, "klizavih" usta i "ustašca" Lene (150), kćeri domaćinstva. U svome *Dnevniku* Gombrowicz opisuje te dvije "anomalije" (*anomos*, "bez zakona") na sljedeći način:

Utvrđujem dve polazne tačke, dve anomalije veoma međusobno udaljene: a) obešen vrabac; b) asociranje Katasjinih usta sa Leninim ustima. Te dve zagonetke počće da traže smisao. Jedna će prožeti drugu, težeći za celinom. Otpočće proces domišljanja, asocijacija, tragova, nešto će početi da se stvara, ali embrion je pre nakazan... i ta mračna, nepojmljiva šarada prizivaće svoje rešenje... tražiće objašnjavajuću, sređujuću ideju....¹²

10 Berressem, *Lines of Desire*, str.29.

11 Navedeno u predgovoru engleskom izdanju romana: Witold Gombrowicz, *Cosmos*, prev. Danuta Borchardt (New Haven & London: Yale University Press, 2005.). Ovdje je inače korišten hrvatski prijevod Slobodanke Pošić i Zdravka Malića (Zagreb: Zora – GZH, 1973.) (op. prev.).

12 Gombrowicz, *Dnevnik III* (1961-1966), str.219.

Deleuze transformira tu "nerazumljivu šaradu" koja "traži ideju" i "priziva rješenje" u rigorozno formalnu shemu: "Witold Gombrowicz uspostavlja seriju obješenih životinja kao označitelja (ali što one označavaju?) i shemu ženskih usta kao označenih (ali čime označenih?); svaka od tih serija razvija sustav znakova, ponekad po suvišku, ponekad po nedostatku, i komunicira s drugom putem čudnih, interferirajućih predmeta."¹³ Gombrowiczeve serije "nalaze se u trajnoj odnosnoj izmještenosti" i obilježene su "bitnim razmimoilaženjem".¹⁴ U knjizi *Razlika i ponavljanje* Deleuze čak tvrdi, i to još energičnije, kako su "osnovne serije [...] apsolutno divergentne."¹⁵

No čini se da te dvije serije dijele mjesto pojavljivanja – "gustine i prosvjetline" te "mračan prolaz" – kao i početno sveprožimajuće crnilo, možda čak kao različite materijalizacije tog crnila. U svakom slučaju, čini se da one od samog početka jedna drugu kontaminiraju. Stoga postaje upitno je li ta jasna, iako međuovisna dualnost koju pretpostavljaju Deleuze i Goddard ikada uopće postojala u takvoj strogo dualnoj formi, gdje bi održavala takvu razdvojenost između označitelja i označenoga. Gombrowicz i sâm govori o "intelektualnim stranputicama".¹⁶ Neposredna veza uspostavljena između tih dviju serija putem trećeg elementa ("crnila") te njihova neugodna bliskost i narativno suučesništvo naprosto proturječe "bitnom razmimoilaženju" kakvo uočava Deleuze.¹⁷ dvije serije u *Kozmosu* nisu bez zajedničkih, neprenosivih svojstava niti pokazuju "apsolutnu divergenciju" ikakve vrste. Čini se da one ustvari zajedno nude ključ i vode na nova mjesta kao što je Katasjina jedva osvijetljena soba, koju Witold opisuje kao "Katasjinu šupljinu", "nagršena usta" koja se "isisaše usisana" (str.187). Tu nema razmimoilaženja, nego prije niz nasumičnih korespondencija izazvanih nekakvim nedostatkom. A to što se posljednji prizori naracije, gdje se dvije serije urušavaju u samoubojstvu Lenina zaručnika Ludwika, a Witold prstima istražuje njegova beživotna usta, događaju u potpunoj tami, sugerira čistu suprotnost svakoj pretpostavci o "apsolutnoj divergenciji": "a pritom duboko zadovoljstvo da su se najzad 'usta' povezala s 'vješanjem'. Ja sam ih povezao! Konačno. Kao da sam izvršio svoju obavezu" (271). No početno crnilo koje je ponovo uhvaćeno u ovim posljednjim prizorima, kojemu ćemo se kasnije vratiti, još uvijek ostaje u bitnome nedostupno i Fuksu i Witoldu.

Obješeni vrabac i asocijacija Katasjinih i Leninih usta (dvije anomalije koje uspostavlja Gombrowicz) nisu bez vlastite generativne snage. Nije dovoljno naprosto zaključiti kako su to okolnosti u kojima se pojavljuje kozmos, budući da te anomalije nisu naprosto dane, nego su dane za mišljenje i spekulaciju. Roman prikazuje borbu "metafizike u nastajanju", sistematizacije, ili kako to sam Gombrowicz kaže, to je "roman o stvarnosti koja se stvara."¹⁸ Čim Witold i Fuks otkriju obješenog vrapca, prvi se zapita: "Tko je objesio, zašto?" (146), ali prizor kontemplacije ubrzo postaje nepodnošljiv: "mi s tim vrapcem, obješenim u žbunju... i zamagli mi se nešto pred očima poput narušene proporcije ili poput netaktičnosti, neprikladnosti s naše strane..." (147). Ono što započinje kao naizgled nedužno ispitivanje pretvara se u opsesivnu potragu za sličnostima.

Kozmos uspostavlja nestabilnu semiotiku, katalogizirajući *deixis* u različitim oblicima, vizualnim i auditivnim, bez ikakve stroge kategorizacije. Na primjer, kada se uspostavi prva sličnost, "Katasja primače Leni pepeljaru koja je bila prekrivena mrežom od tanke žice, kao neki odjek, kao neki slabašni odjek one mreže (kreveta), s njezinom nogom kad sam ušao u sobu, kada ono stopalo, malko nožnog lista, na mreži kreveta itd. itd. Katasjina se klizava usna nađe blizu Leninih ustašca" (150). "Slabašni odjek" žičane mreže kreveta na kojem je Witold zatekao Lenu uzrokuje "iskliznuto" približavanje – iako bez

13 Deleuze, *Logique du sens*, str.53-54.

14 Sličnu tvrdnju iznosi Silvia Dapía, "The First Poststructuralist: Gombrowicz's Debt to Nietzsche", *The Polish Review* 54/1 (2009.), str.87-99, ovdje 94.

15 Deleuze, *Différence et répétition*, str.161.

16 Gombrowicz, *Dnevnik III* (1961-1966), str.219.

17 Deleuze, *Logique du sens*, str.54.

18 Gombrowicz, *Dnevnik III* (1961-1966), str.219.

ikakve kauzalnosti, naime usta su se "našla" ondje – između Katasjinih unakaženih usta i Leninih ustašca. Nakon tog početnog odjeka odnosi i sličnosti počinju se nesustavno množiti. Noću se Witold zatekne u hodniku prenočišta balansirajući između "premišljanja" i "kombiniranja" o obješenom vrapcu, akterima i razlozima koji bi mogli biti upleteni, i osjeća kako klizi prema Katasji "istim onim isklizajem kao na Katasjinoj usni" (153), sve dok iznenada ne uvidi potencijalno beskonačnu regresiju stvari, naime da uvijek postoji predmet "iza" i "izvan" drugih.

Vrabac! Vrabac! Zapravo ni Fuks ni vrabac nisu izazivali moje zanimanje, usta, razumije se, bila su zanimljiva... takve su mi misli prolazile u rastresenosti... dakle odbacujem vrapca da se na ustima saberem i iz toga nastade nekakva mučna partija tenisa, vrabac me, naime, upućivao na usta, usta na vrapca, nađoh se između vrapca i usta [...]. A najnelagodnije je bilo što se vrabac nije dao smjestiti na istu mapu s ustima, bio je on posve izvan, iz druge oblasti, a uostalom i posve slučajan, čak sablastan, pa što mi se onda nasadio, nije imao prava!... Oh, oh, nije imao prava! Nije imao prava? Što je nešto manje imalo smisla, to se jače nametalo i bilo nasrtljivije i teže ga se čovjek mogao otarasiti – ako nije imao prava, veći je bio smisao u tome što me se držao! (155)

Dvije anomalije tako *nezakonito* počinju ličiti jedna drugoj. Vrabac "nema prava" javljati se iza usta, ali upravo zato što ga nema, on se uspijeva tim učinkovitije nametnuti u odnosu na njih. Možda u ovom fragmentu možemo ući u trag problemu koji ostaje neriješen u Deleuzeovoj aproprijaciji Gombrowicza, naime da ona ne uspijeva uhvatiti točnu narav neprestane promjene između dviju serija. One nisu naprosto "simultane, a da nikada nisu jednake";¹⁹ Gombrowicz opisuje užas osjećaja da bi *mogle postati jednake*, da bi zagonetka *mogla imati rješenje*. A uvođenjem Gombrowicza u Deleuzeov filozofski tekst, čini se kao da se on počinje nametati njegovu djelu na isti način na koji Katasjina usta iskaču iza obješenog vrapca.

Iako je Deleuze među onim filozofima koji su najprijemčiviji za Gombrowiczevo djelo, čini se kao da i sama filozofija svodi svoje trope na navodno stroge formate koji se mogu reproducirati i implicirani su u drugim, zasebnim djelima. Drugim riječima, mogli bismo reći da Deleuze u svojim spisima ne uspijeva "udvostručiti količinu simulakruma"²⁰; Gombrowiczeve anomalije su u *kućnom pritvoru* – na način na koji je to zločesto dijete – u Deleuzeovoj "serijalnoj formi", iako se ne mogu učinkovito svesti na ilustraciju te forme. Književnost (i umjetnost općenito) daje građu za razmišljanje, ali kao dar filozofiji, možda neželjen, bez izdanog računa ili kao Trojanski konj, ona uvijek izbjegne njezinu stisku i dovede u pitanje njezine želje. Međutim, to nije argument u prilog *jedinstvenosti* Gombrowiczeva djela, ili bilo kojeg drugog umjetničkog djela, i ja ne tvrdim da bi se trebalo vratiti romantičnoj ideji nesagledivih umjetničkih dubina i jedinstvenih istina; prije bi se moglo reći da je to pokušaj da se *nastavi čitati Kozmos* kako bi se prikupilo sve što bi ta knjiga mogla ponuditi filozofskom promišljanju.

Jedno od područja koje je Deleuze zanemario je točna funkcija "detektivskog" u romanu, forme koju je naprosto prisvojio (iako i dekonstruirao) kao pravi modus filozofije. Kada se Witold zatekne noću u hodniku, pita se je li

¹⁹ Deleuze, *Logique du sens*, str.55.

²⁰ Usp. Ronell, *Crack Wars*, str.64.

Fuks izašao “da provjeri neku pojedinost i da se malko osvrne po noći? ...igrao se detektiva?...” (152). Prisjetimo li se Deleuzeove aproprijacije lika detektiva kao filozofa, možemo i alegorijski interpretirati dvojicu glavnih likova kao da formiraju dvije paradigme: suučesničke *serije* umjetnika (Witold) i filozofa (Fuks). Takvo alegorijsko čitanje ne bi bilo izvan Gombrowiczevih nastojanja, jer on povremeno zna ubaciti filozofske koncepte kao likove u romanu.²¹ Postoji nekoliko trenutaka koji bi podržali takvo čitanje. Kada Lenin zaručnik Ludwik ponovno za vrijeme večere obznani da je prije nekog vremena primijetio uz cestu obješeno pile, Witold se zatekne uronjen u bujicu odnosa: “usta nad ustima, ptičja žica, pile i vrabac, muž i ona, dimnjak iza oluka, usne iza usana, usta i usta, vočke i staze, drveće i cesta, previše, previše, bez sklada i reda, val za valom, beskraj u rastresenosti, raspršenosti” (159), dok Fuks nastavlja analizirati: “Mala čudesa [...] obješeni vrapci, pilići vise, a možda to naviješta smak svijeta? Kako je visoko visilo to pile? Daleko od ceste?” (158).

Odnos Witolda i Fuksa nastavlja se razvijati sličnom logikom. Witold je umoran, preznojen, neodlučan – Fuks analizira, zaključuje i “napreduje”. Kada Witold jednom opet zaluta u mislima tijekom večere, zureći u prazno i “kao da prekoračuje nekakav prag”, bivajući već pomalo “s one strane”, Fuks ga zapita: “Što tako blejiš?” (162). To pitanje potiče preispitivanje niza strijela i drugih pretpostavljenih indicija. Witold bi “neka prestane već jednom”, ali Fuks ustraje: “Ako je strijela, onda na nešto pokazuje [...] što smeta ako provjerimo [...] nema drugog načina da budemo sigurni je li ili nije strijela” (164-165). Fuks daje Witoldovim opservacijama smjer, kauzalnost i smisao vukući ga za sobom: “[Fuks] je dosta slabo navaljivao, ali i ja sam bio slab i uopće, slabost je sve prožimala” (165). Witold također redovito obamre nakon što se pojave novi tragovi ili zvučni signali: “Odjednom nešto klepne. [...] obamrijev” (183) i “mir razbi tresak – iz sve snage, gromovit. Srsi me prodoše –” (190).

Taj umor, ta obamrlost i slabost, da i ne spominjemo brojne prizore u kojima je Witold pospan, nemaju toliko veze s onim što Berressem smatra “odnosom prema nesvjesnome i svijetu snova”,²² nego prije upućuju na umor kao nešto što se filozofski ne može asimilirati: Fuks nikada nije umoran i spava savršeno zdravim snom. Ronell, koja uvijek pokazuje akutan osjećaj za filozofski neprikladno, zastupa izuzeće umora iz filozofskog diskursa.²³ Njezina ustrajna karakterizacija umora, dosade i gluposti kao subverzije filozofske forme odjekuje širom *Kozmosa*.

Kad jednom uvidimo kako likovi iz književnosti i filozofije parazitski ovise jedni o drugima, postaje jasna Deleuzeova početna aproprijacija Gombrowicza kao jednog od književnih začetnika “serijske forme” koju on želi filozofski razviti. Poput Fuksa, koji u svojim istraživačkim nastojanjima ovisi o snenom Witoldu, “detektiv” Deleuze ne može upravljati vlastitim “zamršenim zahvatima” (165) bez Gombrowicza, koji pak sudjelujući, htio to ili ne, krećući se gotovo poput “roba” (166), uvodi čitav spektar zamora, gluposti, dosade i slabosti u ozbiljan filozofski pothvat. Kada književnosti dosadi filozofija, filozofija je ta koja je na gubitku: “[Fuks] je gnjavio – i bio je toga posve svjestan – odisao je fatalizmom čovjeka koji mora gnjaviti i sve je to bilo do krajnosti jalovo, prazno. Bio je uporan: – Sjeti se... ali znao sam da je uporan iz dosade, i to me gnjavilo” (179). Ali Fuks može samo mrmljati: “Meni se odmah to njezino... to što ona ima s ustima, učinilo mi se... ali... i ovako i onako... tamo-ammo... Što misliš?” (170), “To znači... čini se... što misliš?” (180).

21 Na primjer, Filidor i Anti-Filidor u romanu *Ferdynurke*, koji utjelovljuju sintezu i analizu u kantovskim okvirima. Vidi: Goddard, *Gombrowicz*, 58; i Berressem, *Lines of Desire*, str.56.

22 Berressem, *Lines of Desire*, str.203.

23 Avital Ronell, “The Philosophical Code: Dennis Cooper’s Pacific Rim”, u: *The ÜberReader: Selected Works of Avital Ronell*, ur. Diane Davis (Urbana & Chicago: University of Illinois Press, 2008.), str.188-99, ovdje 193-194.

Noću, kada ga Fuks ostavi u vrtu nakon što je pronjuškao kroz Katasjinu sobu i pronašao beskonačnu bujicu čavala i igala zabodenih u razne predmete, uz buku teških udaraca koja se iznenada pojavljivala i ponovo nestajala, pogođen općom obamrlošću, Witold se popne na stablo kako bi špijunirao Lenu kroz prozor njezine sobe, očekujući da će biti gola. Umjesto toga, vidi kako Ludwik pokazuje Leni čajnik, na što zaključuje: "Postoji nešto kao suvišak stvarnosti, njezina nepodnošljiva nabreknutost."²⁴ Filozofija bi odgovorila na taj "suvišak stvarnosti" regulirajući ili sistematizirajući je na ovaj ili onaj način, obuzdavajući suvišak. Međutim, Witold to više ne može podnijeti.

Poslije tolikih predmeta koje ni izbrojiti nisam kadar, poslije igala, žaba, vrapca, štapića, ruda, pera, kore, kartona itd., dimnjak, čep, naprslina, žlijeb, ruka, kuglice itd. itd. grude, mreža, žica, krevet, kamenčići, čačkalica, pile, prištevci, zaljevi vlage, otoci, igla i tako dalje, i tako dalje do dosade, do presićenosti, sada taj čajnik, s neba pa u rebra, čardak ni na nebu ni na zemlji, zasebno, gratis, kao luksuz nereda, blještavilo kaosa. Dosta. Grlo mi se steglo. Ne mogu ga progutati. Nema boga. Dosta je. Natrag. Kući. (192)

Witold je spreman odustati, obustaviti potjeru, ostaviti istragu iza sebe. Napušten od Fuksa, on će zadaviti Leninu mačku: budući da je ostao sam, nastaviti će dalje. Davljenje mačke može se protumačiti kao alegorija umjetničkog stvaralaštva, presudni trenutak izlaska iz modusa opsesivnog mišljenja kako bi se suočilo sa "suviškom stvarnosti" licem u lice i učinilo je što dalje od mišljenja: "počeh gušiti, sune mi poput munje, što to ja radim, ali pomislih što se tu može, prekasno" (194). Witold zatim objesi mačku o kuku: "Visila je kao vrabac, kao štapić, da bude kompletno" (194). Napušten od Fuksova analitičkog poriva, Witold na neki način *upotpunjuje sliku*. Dok su Fuksovi ciljevi etiološki, potaknuti potragom za kauzalnošću, čini se da je Witoldov cilj drugačiji. Iako njegovo vješanje mačke nastupa nakon niza poteza, od kojih su neki sankcionirani filozofskim istraživanjem (puzi kroz grmlje, njuška po Katasjinoj sobi) i nezakonitih postupaka (penje se na drvo i naposljetku zadavi mačku) razlozi te geste nedokučivi su i samom Witoldu: "Što mi bi da je zadavim? [...] Toliko se toga nagomilalo, toliko se niti isprekrižalo, Lena, Katasja, znaci, lomot, etcetera, žaba recimo, ili pepeljara, etcetera [...] S čime onda da povežem mačku, u koji odnos da je stavim? Nisam imao vremena za razmišljanje [...]" (194-195).

Možda bi bilo ishitreno tumačiti ove prizore nerazumijevanja s pomoću eseja Giorgija Agambena "Bilješke o gestama". Prema Agambenu gestu karakteriziraju "prilike u kojima se ništa ne proizvede niti izvede, nego prihvaća i preuzima." Ona, dakle, "otvara za čovjeka njegovo vlastito područje etike."²⁵ Gesta nije sredstvo za ostvarivanje cilja, nego "postajanje vidljivim sredstvom kao takvim".²⁶ Upravo je vješanje mačke, kao nemotiviran postupak, gesta s ciljem neobjašnjene ispunjenja, ono što omogućuje umjetnosti da stigne do nečega poput etičkoga ili političkoga. Za razliku od Fuksa, Witold ne proizvodi nikakvu sistematizaciju koncepata koja bi dovela do nekog krajnjeg čina. On se čak niti ne smatra daviteljem (194), odnosno svjesnim počiniteljem. Tako u ključnom prizoru, u kojem se sukobljava sa "suviškom stvarnosti", on ne reagira stvaranjem slike, proizvodnjom estetskoga, nego provođenjem geste, koja uvijek ima političke konsekvence.²⁷ Konsekvence ove geste u romanu upravo su revolucionarne. Davljenje Lenine mačke navodi oca Leona da krene u premještanje gotovo čitavog domaćinstva iz prenočišta u planine, dočekuju se novi likovi te se skupini

24 Ova ideja spominje se i u *Dnevniku*, gdje Gombrowicz navodi: "Nekakvi doživljaji, avanture sa stvarnošću za vreme takvoga njenog izranjanja iz magle! Logika unutrašnja i logika spoljašnja. Lukavstva logike. Intelektualne stranputice: analogije, opozicije, simetrije... Naglo rastući ditirampski ritam Stvarnosti koja se besno formira. I njen raspad. Katastrofa. Stid. Naglo prepunjavane prekomernom činjenicom". *Dnevnik III* (1961-1966), str.219-220.

25 Giorgio Agamben, "Bilješke o gestama", prev. Sabine Marić, *Tvrđa* 1-2 (2006.), str. 173-177, ovdje 175.

26 Isto.

27 Isto, 176.

pridružuje čak i svećenik. Ipak, ostaje neizvjesno dopušta li sam *Kozmos* tu filozofsku gestu koja uvodi tekst izvana.

Subverzija forme koja je neprestano na djelu u Gombrowiczovu *Kozmosu* pronalazi svoj izraz na razini jezika, dijelom u neprestanim igrama riječi koje se uspostavljaju između dviju anomalija. Kako su primijetili Berressem i drugi, "igre riječi i zvučna sličnost – na primjer između riječi 'kulka' (loptica), 'kurka' (kokoš) i 'kurwa' (kurva) [...] – uvijek označavaju komunikacijske mostove između dviju serija."²⁸ Leon, glava obitelji Wojty i prvak takvog "čudašenja rječotvornog" (160), osobito se zahukta nakon premještanja naracije u planine. Tada pokreće lavinu derivacija izvodeći "onanijske" besmislice iz riječi *berg*: "berg" (230), "berganje", "bemberg", "bembergost" (236-237), "slatkumbergi i kaznembergi" (238) i tako dalje. U razgovoru s Ludwikom, koji je po zanimanju arhitekt, Leon se otkriva kao oličenje nereda i energično odbacuje Ludwиков poziv na "racionalnu organizaciju društva i svijeta" (176):

Organizirati! To ti sebi zamišljaš i dočaravaš da ovo tu ono tamo i sve je u šaci, ha? [...] Znanstveničiću – [...] povjeri mi, molim te, povjeri mojoj snježno djevičanskoj duši kako ćeš to ti sa znanstvenom spremom orga-ni-zi-ra-ti, po kakvom uzorku, kako, kako ćeš ti tamo što s čim, pitam te, kako ćeš s čim i čemu i za što i gdje, kako ćeš, pitam te, ovo s ovim, ono s onim, u ime čega, kako... (176)

Čini se da su Ludwik i Leon zamišljeni kao dva pola racionalnosti i iracionalnosti, konstrukcije i dekonstrukcije, između kojih su ukliješteni Fuks i Witold. Istodobno se Leonove onanijske igre riječi ne mogu odvojiti od postupaka samog Witolda, koji kaže: "Meni se zapravo sada činilo da obadvojica na nečem radimo – i to teško." (239) i kasnije: "Očekivao sam da će sve krenuti naprijed u smislu berga. Bio sam generalštapski oficir. Ministrant što pomaže kod mise" (264). Na neki je način Witoldov lik, lik umjetnika, suučesnik u subverzivnim etimološkim shemama koje Leon uspostavlja; tek kada je u potpunosti asimilirao Leonov govor, odgovarajući kao on, čini se da se pred kraj romana javlja nešto poput konzistentnosti. Međutim, paradoksalno, Witold dopijeva do određenog osjećaja zaključenosti, do određenog rješenja i određene *logike*, tek nakon što otkriva Ludwиков leš kao oličenje sustava i organizacije.

To nas dovodi do posljednjeg vješanja u romanu: kada se Ludwik objesi u gaju nedaleko od seoske kuće. U nekoj vrsti izokrenutog početnog prizora u romanu, Witold se najprije suočava s ponavljanjem anomalije asociranja Katasjinih i Leninih usana, naime kada pronade dvoje obiteljskih gostiju kako povraćaju na trijemu nakon večere natopljene votkom: "Njezina su usta, koja sam gledao, bila opravdana povraćanjem – zato sam ih gledao – ako je pop povraćao, zašto ona ne bi mogla povraćati?" (265). Nakon ovog prizora slijedi neka vrsta pojačanja prvog prizora romana, kada Witold i Fuks pronađu prvu anomaliju, vrapca koji visi u grmlju: obješeni Ludwиков leš: "Najprije je bilo nekoliko razbacanih breza, a odmah zatim gustiš borova, gušći, mračniji. [...] Čovjek je bio... obješen... promotrio sam, čovjek... noge, polucipele, gore se mogla razaznati glava, nakrivljena, ostalo se stapalo s deblom, s mrakom granja" (266). Za razliku od izvornog suočavanja s obješenim vrapcem, koje je pokrenulo vrtlog asocijacija i kulminiralo gestom vješanja Lenine mačke,

²⁸ Berressem, *Lines of Desire*, str.208.

Witold se ovdje suočava s vješanjem koje se "uklapa": "I pum, pum, pum, pum! Jedan, dva, tri, četiri! Vrabac obješen, štapić visi, mačka ugušena-obješena, Ludwik obješen. Kakav sklad! Kakva dosljednost! Idiotski leš postajase logičan leš" (267). Iako na razini naracije nije dano nikakvo objašnjenje za Ludwikovo samoubojstvo, Witold naziva njegov leš "logičnim lešom", budući da podržava ono što će kasnije nazvati "podzemnom logikom" koja se "rastapala u tananosti kao u magli [...] kad si je htio uhvatiti u stegu obične logike" (268).

To nas dovodi natrag do naših početnih opservacija. Filozofija, koja uvijek djeluje do određene mjere "poput države", dijeli s politikom sposobnost da inkorporira i proguta (iako je probava uvijek problematična) svako djelovanje ili predmet koji se ponudi iz domene umjetnosti, organizirajući ga po vlastitoj logici, i to unatoč onome što je Witold nazvao "suviškom stvarnosti". Nezakonitost umjetničkih gesti stoga je uvijek relativna, a nikad apsolutna; njihova nezakonitost nikada se ne mjeri samo u odnosu na njih same i stoga im je u bitnome nedostupna. Pa čak i kada se otvore za političko, umjetnost nikada ne može misliti o njima kao da su političke. Umjetnost ne mari za sistematizacijske pokušaje filozofije, kao ni za pokušaje politike da zakonima obuhvati njezine geste, ona ide dalje – umorna, u dosadi, obuzeta zamorom, ali s "podzemnom logikom" – i zadavi mačku. U *Kozmosu* Gombrowicz nudi Deleuzeu serijalnu formu dviju divnih anomalija i hihoće se kada ovaj treba pozvati druge romanopisce kako bi odveo svoju filozofsku apropijaciju dalje od tame i "okrutnosti" u kojoj je ta forma nastala.²⁹ Ta okrutnost jedan je od filozofskih naziva za umjetničko djelo, čiji je zadatak možda otkriti nove načine negacije – *ne-zakonitosti*. Kako kaže Gombrowicz: "Proturječiti, čak i u malim stvarima, vrhunska je nužnost umjetnosti danas,"³⁰ a to znači potvrditi nezakonitu gestu unatoč bijegu filozofije od nezrelosti.

29 Na primjer, Deleuze započinje svoj esej "La Littérature et la vie", u: *Critique et clinique* (Pariz: Les Éditions de Minuit, 1993.), str.11-17, riječima: "Pisati nipošto ne znači nametnuti formu (izražavanja) gradi proživljenog iskustva. Prije bi se moglo reći da se književnost kreće u smjeru neformiranog i nedovršenog, kao što je Gombrowicz to govorio i prakticirao" (11), ali u ostatku eseja više ne spominje Gombrowicza.

30 Navod u: Susan Sontag, predgovor romanu *Ferdydurke*, prev. Danuta Borchardt (New Haven: Yale University Press, 2000.), str.x.

"I was thinking sparrow Lena
stick Lena cat into the mouth
honey lip twirl-up wall clod
of dirt scratch finger Ludwik
bushes hangs hang mouth
Lena alone there kettle cat
stick fence road Ludwik priest
wall cat stick sparrow cat
Ludwik hangs stick hangs
sparrow hangs Ludwik
cat I'll hang": **Or, How
Gombrowicz Exposed
Philosophy's Immaturity**

"It seems impossible to meet the demands of Dasein and simultaneously have coffee and croissants for an evening snack."

– Witold Gombrowicz⁰¹

Politics shares with philosophy its attempts at systematization. What in politics is often lamented as a progressive bureaucratization and obfuscation of revolutionary fervor is presented in philosophy as the maturation of a system, metaphysical, ontological, or otherwise. This slow process of maturation that supposedly takes place throughout a philosopher's life is organized around the establishment of concepts, ideas, and notions, and any philosophy that distances itself from this process of accumulation or growth is quickly labeled childish or immature, not ripe to speak for itself. As in politics, we may speak in philosophy of processes of legalization bound up with the question of maturation ("reaching legal age") as guarantee for its internal conceptual stability. These processes, however, whenever they are invoked, seem to announce a future of paralysis and amnesia that comes with philosophical maturity and eventually old age, a future in which philosophical youth is definitely absent.

The arts and literature are often invoked in support of these philosophical efforts at systematization and legalization, whether as harbingers of new truths, as undoers of false idealisms, or providers of novel paradigms. Yet art sometimes works actively against these tendencies of philosophical appropriation, or even declares itself illegal in its wake. This is precisely the case in the oeuvre of the Polish writer Witold Gombrowicz, who spent most of his working life in exile in Argentina, and especially in his last novel *Cosmos* (1965), which, according to Hanjo Berressem, is "one of the most thorough deconstructions of the detective novel in modern literature."⁰² The usage of the philosophically tainted word "deconstruction" in this description should alert us to what is at stake in Gombrowicz's literary enterprise.

One of the first philosophers to pick up Gombrowicz's work was Gilles Deleuze. Already in 1966 he mentions *Cosmos* in a footnote to the essay "Renverser le platonisme (Les simulacres)," ⁰³ which concerns itself with the Nietzschean "overthrow of Platonism," namely, "to raise up simulacra, to assert their rights over icons or copies."⁰⁴ It forms one of the first steps in Deleuze's attempt to develop a philosophical system that accomplishes such an overthrow, where ideality is replaced with an infinite regress of simulacra under the reign of "chaosmos." This essay would later be reworked into the appendix of the *The Logic of Sense*. In the sixth chapter of the latter work, entitled "Serialization," Deleuze develops a formal approach to the concept of series. In order to substantiate this conceptualization Deleuze mobilizes, inter alia, specific fragments from Gombrowicz's novel *Cosmos*. "The serial form," Deleuze announces in italics, "is necessarily realized in the simultaneity of at least two series."⁰⁵ But how to think this simultaneity, and what if the philosophical simultaneity of Deleuze's serial form does not fully correspond with the literary simultaneity of Gombrowicz's two series? This would be a first question.

Deleuze does not only acquire specific series from *Cosmos* as material for philosophical elaboration; it seems as if at least part of his philosophical endeavor – to "overthrow Plato" – hinges on the detective modes explored by Gombrowicz and others. This becomes apparent at the end of his introduction to *Difference and Repetition*, where he states:

01 Witold Gombrowicz, *Diary*, trans. Lillian Vallee (New Haven & London: Yale University Press, 2012), 226.

02 Hanjo Berressem, "Witold Gombrowicz: *Cosmos*: The Case of the Hanged Sparrow," in *The Polish Review* 36.2 (1991): 145-59, at 145. See also Hanjo Berressem, *Lines of Desire: Reading Gombrowicz's Fiction with Lacan* (Evanston: Northwestern University Press, 1998).

03 Gilles Deleuze, "Renverser le platonisme (Les simulacres)," in *Revue de Métaphysique et de Morale* 71.4 (1966): 426-38, at 431n1. Partially translated by Rosalind Krauss, "Plato and the Simulacrum," in *October* 27 (1983): 45-56, at 52n7.

04 Deleuze, "Plato and the Simulacrum," 52; cf. Gilles Deleuze, *The Logic of Sense*, trans. Mark Lester with Charles Stivale (London: The Athlone Press, 1990), 262.

05 Deleuze, *The Logic of Sense*, 36.

A book of philosophy should be in part a very particular species of detective novel, in part a kind of science fiction. By detective novel we mean that concepts, with their zones of presence, should intervene to resolve local situations. They themselves change along with the problems. They have spheres of influence where, as we shall see, they operate in relation to "dramas" and by means of a certain "cruelty." They must have a coherence among themselves, but that coherence must not come from themselves. They must receive their coherence from elsewhere.⁰⁶

Deleuze thus suggests that his philosophical strategy operates like this "very particular species of detective novel," namely not one in which there is a teleological drive to the revelation of a Truth or an Idea, or conceptual closure; Deleuze's philosophy does not follow the line of a classic detective novel, but rather appropriates Gombrowicz's "deconstructed" variant as an antidote against the metaphysical closures of the past.

The coherence of philosophy depends on "drama" and its concepts operate necessarily, though not always avowedly, with a certain "cruelty," a cruelty that, as we will see, should not be read in terms of (meta-)physical violence, but as that which accompanies all negation. Philosophy, moreover, always derives from an "elsewhere," an elsewhere perhaps from which "dramas" and "cruelty" could be cited, quoted, and imported. Thus it seems that for Deleuze, philosophy is never fully dependent on itself – it is, in other words, always immature. This does not mean that it is by definition unsystematic; it means that its systematicity comes always under the condition of an "elsewhere," that it is ever in complete control of itself, always somehow underage.

This immaturity is not relegated to a part of the philosophical enterprise, safely contained in the oeuvres of certain "non-serious" philosophers or even "anti-philosophers"; it is endemic to philosophy in so far as philosophy is constantly faced with its own infancy. It would be possible to gather this sense of immaturity from another of Gombrowicz's novels, *Ferdydurke*.⁰⁷ In his introduction to the first Spanish edition, he states that is "impossible" to find a form for immaturity, it resists full conceptualization: "[N]either science, nor art, nor any other medium of cultural expression allows man to manifest in a direct way his own immature reality, condemned to an eternal mutism."⁰⁸ That Gombrowicz deems finding an appropriate form for the expression immaturity impossible ought to send out a warning signal to the entire philosophical enterprise in so far as it allows for the unspeakable to remain an integral part of it. And that immaturity can never be directly exposed is therefore the condition under which the present essay operates.

What I will try to tease out are the specific ways in which Gombrowicz's work resists philosophy, never allowing for a full systematic capture. This resistance, perhaps even contradiction, operates on a variety of levels, ranging from the linguistic and semiotic to the characterization of the personages. What follows is a reading of these types of resistances that Cosmos sets up against philosophical appropriation, while perusing its philosophical tangents and receptions: primarily Deleuze's appropriation of Cosmos supplemented with Michael Goddard's Deleuzian reading in Gombrowicz, Polish Modernism, and the Subversion of Form, and, secondarily, Berressem's Lacanian approach.⁰⁹ The latter stated: "In its suspension between form (as representative of maturity and castration) and fluidity (as representative of immaturity and polymorphous perversity), Gombrowicz's work is lodged between Lacan and Deleuze and Guattari."¹⁰ It remains a question whether this philosophical "lodging" is as stable as presumed by the above authors, whether its form

06 Gilles Deleuze, *Difference and Repetition*, trans. Paul Patton (New York: Columbia University Press, 1994), xx. Avital Ronell has picked up on Deleuze's detective strategies in *Crack Wars* (Urbana & Chicago: University of Illinois Press, 2004), 64.

07 Unfortunately, the scope of the present article leaves no space for a full reading of *Ferdydurke* that would include an extensive treatment of immaturity in Gombrowicz.

08 Preface to the first Spanish edition of *Ferdydurke* (Buenos Aires: Argos, 1946): <http://www.literatura.org/wg/ferdywg.htm>

09 Jean-Pierre Saglas, in Gombrowicz, *un structuraliste de la rue* (Paris: Éditions de l'éclat, 2011), further notes an affinity with Michel Foucault's work, which however cannot be substantiated with any of Foucault's extant texts (61). Gombrowicz himself only mentions Foucault once, in his *Diary*, 697.

10 Berressem, *Lines of Desire*, 29.

allows us to do so, or to what extent Gombrowicz arms his work against such positioning. By investigating these questions, it is my hope to arrive at a more precise characterization of how literature, and art in general, occupies an illegal position – an “elsewhere” – once considered from the perspectives of philosophy, even one as hospitable to literature as Deleuze’s. This characterization has the advantage, indirectly, of making philosophy’s own immaturity – ignored, disavowed, savored, or even formalized (Badiou’s formula “There is no philosophical truth”) – all the more explicit.

Witold Gombrowicz describes his novel *Cosmos* as “black, first and foremost black, something like a black churning current full of whirls, stoppages, flood waters, a black water carrying lots of refuse, and there is man gazing at it – gazing at it and swept up by it – trying to decipher, to understand and to bind it into some kind of whole....”¹¹ The novel opens with this blackness, what perhaps could be called, in another philosophical register, the “night of the world.” We encounter the two protagonists, students Witold and Fuks, walking on a Polish country road in the mid-summer heat, close to Zakopane.

Sweat, Fuks is walking, I’m behind him, pant legs, heels, sand, we’re plodding on, plodding on, ruts, clods of dirt, glassy pebbles flashing, the glare, the heat humming, quivering, everything is black in the sunlight, cottages, fences, fields, woods, the road, this march, from where, what for, a lot could be said, [...] all glistening in the sun, yet black, the blackness of trees, the grayness of the soil, the earthy green of plants, everything rather black. (1-2)

The sunlight experienced by Witold does not Platonically illuminate the world, rather blackens it: “everything is black in the sunlight, [...] all glistening in the sun, yet black.” The first, remarkably traumatic object to appear from this primordial void, from the “recesses and hollows” in the bushes is a “sparrow hanging from a piece of wire. Hanged” (3). Fuks and Witold are hardly able to remove themselves from the scene, but soon after manage to find a boarding house close by, presumably to study for their exams. Here they encounter a second anomaly that will dominate the remainder of the novel, not an object but a relation. For Witold immediately notices “a strange deformity of the mouth,” an arousing and sexual “dark passage” (5) of housekeeper Katasia, and subsequently the connection between her deformed, “slithering” mouth, and the “little mouth” of Lena (8), the daughter of the household. In his *Diary*, Gombrowicz describes these two “anomalies” – from *anomos*, “without law” – as follows:

I am establishing two starting points, two anomalies, very distant from one another: (a) a hanged sparrow, (b) the association of Katasia’s lips with Lena’s. These two puzzles will begin to demand sense. One will permeate the other in striving to create a whole. A process of conjectures, associations, circumstantial evidence, something will begin to create itself but it is a rather monstrous embryo...and this murky, incomprehensible charade will call for its solution...it will search for an explanatory, ordering idea....¹²

11 Cited in Translator’s Note to Witold Gombrowicz, *Cosmos*, trans. Danuta Borhardt (New Haven & London: Yale University Press, 2005), ix. Subsequent references between parentheses.

12 Gombrowicz, *Diary*, 674-5.

Deleuze transforms this "incomprehensible charade" that "demands sense" and "calls for solutions" into a rigorously formal scheme: "Witold Gombrowicz established a signifying series of hanged animals (what do they signify?), and a signified series of feminine mouths (what is signifying them?); each series develops a system of signs, sometimes by excess, sometimes by default, and communicates with another by means of strange interfering objects."¹³ Gombrowicz's series "are in perpetual relative displacement" and marked by "an essential lack of correspondence."¹⁴ Deleuze even claims, more forcefully, in *Difference and Repetition* that "The basic series [...] are absolutely divergent."¹⁵

But both series seem to share their site of appearance – "recesses and hollows" and a "dark passage" – with the initial all-permeating blackness, or perhaps even as different materializations of this blackness. In any case, they already seem to contaminate each other from the very beginning. It thus becomes questionable whether the clear, though interdependent, duality assumed by Deleuze and Goddard ever existed in this strictly dual form in the first place, where such separations between signifier and signified would hold. Gombrowicz himself speaks of an "intellectual wilderness."¹⁶ The immediate connection established between the two series by means of a third element ("blackness") and their uncomfortable proximity and narrative complicity simply contradict "the essential lack of correspondence" claimed by Deleuze¹⁷; the two series in *Cosmos* are not without common, unshiftable properties, nor do they exhibit an "endless divergence" of sorts. Together they seem in fact to offer clues and lead to new places such as Katasia's sparsely lit room, described by Witold as "that cavern of Katasia's [...], the botched-up mouth suckled all over me, sucking me" (61). There is no lack of correspondence, but rather haphazard correspondences driven by a lack. And that the final scenes of the narrative, where the two series collapse into the suicide of Lena's fiancé Ludwik and Witold fingering his lifeless mouth, take place in total darkness, suggests quite the opposite of any presumption of "endless divergence": "There was a deep satisfaction that finally 'mouths' had become connected with 'hanging.' I had connected them! At last. As if I had performed my duty" (181). But the initial blackness that is recaptured in these last scenes, to which we will return below, still remains essentially inaccessible to both Fuks and Witold.

The two anomalies established by Gombrowicz, the hanging sparrow and the association of Katasia's and Lena's mouths, are not without a generative force of their own. It is not satisfactory merely to conclude that these are the conditions under which a cosmos appears, as the anomalies are not merely given; they are given to thought and speculation. The novel portrays the struggle of "becoming metaphysics," of systematization, or, as Gombrowicz put it himself, it is "a novel about a reality that is creating itself."¹⁸ As soon as Witold and Fuks discover the hanging sparrow, the former asks himself: "Who hanged it, why, for what reason?" (3), but the scene of contemplation quickly becomes unbearable: "the two of us with the hanging sparrow in the bushes...and something like a violation of balance, or tactlessness, an impropriety on our part loomed in my mind..." (4). What starts off as a seemingly innocent inquiry transforms into an obsessive search for affinities.

Cosmos sets up an unstable semiotics, cataloguing different forms of deixis, visual and auditive, without any rigorous categorization. For example, when the first resemblance is established, "Katasia pushed an ashtray toward Lena, the ashtray had a wire mesh – as if an echo, a faint echo of the other

13 Deleuze, *The Logic of Sense*, 39.

14 A similar claim is made by Silvia Dapia, "The First Poststructuralist: Gombrowicz's Debt to Nietzsche," *The Polish Review* 54.1 (2009): 87–99, at 94.

15 Deleuze, *Difference and Repetition*, 123.

16 Gombrowicz, *Diary*, 675.

17 Deleuze, *The Logic of Sense*, 39.

18 Gombrowicz, *Diary*, 674.

net (on the bed), on which a leg, a foot, a calf lay on the wire netting of the bed when I had walked into the room etc., etc. Katasia's lip, slithering, found itself near Lena's little mouth" (8). "A faint echo" of the wire netting of the bed on which Witold encountered Lena causes a "slithering" rapprochement – though without any causality, namely "found itself" – between Katasia's damaged mouth and Lena's little mouth. After this initial echo, relations and resemblances begin to multiply unsystematically. At night, Witold finds himself stuck in the hallway of the boarding house, suspended between "pondering" and "scheming" about the hanging sparrow, the actors and reasons involved, and he feels himself "slithering toward Katasia with the same slipperiness as her lip" (11), until he suddenly realizes the potentially infinite regression of objects, that there are always objects "behind" and "beyond" others.

The sparrow! The sparrow! Actually neither Fuks nor the sparrow was of much interest to me, it was the mouth, quite plainly, that really intrigued me...or so I thought in my distraction...and as I let go of the sparrow to concentrate on the mouth, a tiresome game of tennis evolved, for the sparrow sent me to the mouth, the mouth back to the sparrow, and I found myself between the sparrow and the mouth [...]. But worst of all, the sparrow could not be placed on the same map as the mouth, it was totally beyond, in another realm, it was here quite by chance, ridiculous actually, so why was it cropping up, it had no right!... Oh, oh, it had no right! Had no right? The less justification it had the more strongly it inflicted itself upon me and became more intrusive and more difficult for me to shake off – if it had no right, then the fact that it was pestering me was all the more significant! (14)

The two anomalies thus start to resemble each other illegally. The sparrow has "no right" to crop up behind the mouth, but precisely because it had none, it succeeds in profiling itself in relation to the mouth all the more effectively. It is perhaps in this fragment that we may trace the problem that remains unsolved in Deleuze's appropriation of Gombrowicz, namely that it fails to capture the precise nature of the constant exchange between the two series. They are not just "simultaneous without ever being equal"¹⁹; Gombrowicz describes the terror of the sense that they might become equal, that the puzzle might have a solution. And by importing Gombrowicz into his philosophical text, it is as if his writing starts to insinuate itself in Deleuze's work in the same way that Katasia's mouth pops up behind the hanging sparrow.

Even though Deleuze is one of the philosophers most receptive to Gombrowicz's work, it seems as if philosophy itself reduces its tropes to supposedly rigorous formats, reproducible and implicated in other, disjunct oeuvres. Put otherwise, we could say that Deleuze fails to "double the provisions of the simulacrum"²⁰ in his writing; Gombrowicz's anomalies are grounded – in the way one grounds a naughty child – in Deleuze's "serial form", though they cannot effectively be reduced to an illustration of this form. Literature (and art in general) gives to think, and as a gift to philosophy, perhaps unasked for, without return receipt or as a Trojan horse, it always

¹⁹ Deleuze, *The Logic of Sense*, 41.

²⁰ Cf. Ronell, *Crack Wars*, 64.

eludes philosophy's grasp and compromises its desires. This is however not so much an argument in favor of the singularity of Gombrowicz's work, or any work of art, nor do I argue for a return to the romantic notion of impenetrable artistic depths and singular truths; this is rather an attempt to continue reading *Cosmos*, to gather what it may yield to philosophical thought.

One of the areas neglected by Deleuze is the precise function of the "detective" in the novel, a form he simply appropriates – albeit deconstructed – as the proper mode of philosophy. When Witold finds himself stuck in the hallway at night, he wonders whether Fuks went out "to check some detail and to look around in the night?...was he playing detective?..." (11). If we recall Deleuze's appropriation of the figure of the detective as philosopher, we may well allegorically read the two protagonist figures forming the two paradigms, the complicit series of artist (Witold) and philosopher (Fuks). Such an allegorical reading would not be beyond Gombrowicz's oeuvre, who on occasion has figured philosophical concepts as novel characters.²¹ There are several moments that would substantiate such a reading. When Lena's fiancé Ludwik announces, again at dinner, that he had noticed a hanging chicken along the road some time ago, Witold finds himself immersed in a deluge of relations, "mouth above mouth, bird and wire, chicken and sparrow, she and her husband, chimney behind drainpipe, lips behind lips, mouth and mouth, little trees and footpaths, trees and the road, too much, too much, without rhyme or reason, wave after wave, immensity in distraction, dissipation" (19-20), whereas Fuks progresses analytically: "Oh, wonder of wonders [...] hanged sparrows, hanging chickens, maybe it's an omen that the world is coming to an end? How high up was the chicken hanging? How far from the road?" (19).

The relation between Witold and Fuks continues to develop along similar lines. Witold, tired, sweating, reluctant – Fuks, analyzing, deducing, and "progressing." When Witold once again zones out during dinner, gazing and "crossing some kind of a threshold," arriving little by little "on the other side," Fuks asks, "What are you gawking at?" (23-4). This question sets off an investigation of a number of arrows and other presumed indices. Witold "wished he'd let it go," but Fuks insists: "If it's an arrow, it must be pointing to something [...] what's the harm in checking [...] there's no other way to establish whether it's an arrow or not an arrow" (28). Fuks infuses Witold's observations with direction, causality, and sense, dragging him along: "[Fuks] insisted rather weakly, but I felt weak too, weakness pervaded everything" (28). Witold also regularly goes numb after new clues and sound signals present themselves, "Suddenly something tapped. [...] I went numb" (55), and "suddenly a pounding – forceful and resonant, shattered the calm! I went numb –" (65).

This fatigue, numbness, and weakness, not to mention the numerous scenes in which Witold is sleepy, have less to do with what Berressem claims to be a "relation with the unconscious and the world of dreams,"²² and points rather to tiredness as philosophically unassimilable – Fuks is never tired and regularly enjoys a healthy sleep. Ronell, who always displays an acute sense of the philosophically improper, acknowledges the exclusion of tiredness from philosophical discourse.²³ Her insistent characterization of fatigue, boredom, and stupidity as subversions of philosophical form resonates throughout *Cosmos*.

Once we realize how the characters of literature and philosophy are parasitically dependent on each other, Deleuze's initial appropriation of

21 For example, Filidor and Anti-Filidor in *Ferdydurke*, impersonating synthesis and analysis in a Kantian framework. See Goddard, *Gombrowicz*, 58, and Berressem, *Lines of Desire*, 56.

22 Berressem, *Lines of Desire*, 203.

23 Avital Ronell, "The Philosophical Code: Dennis Cooper's Pacific Rim," in *The ÜberReader: Selected Works of Avital Ronell*, ed. Diane Davis (Urbana & Chicago: University of Illinois Press, 2008), 188-99, at 193-4.

Gombrowicz, as one of the literary originators of the "serial form" that he wants philosophically to develop, becomes clear. Like Fuks, who is dependent for his investigative efforts on sleepy Witold, the "detective" Deleuze cannot manage his own "complicated maneuvers" (29) without Gombrowicz, who, however, by participating willy-nilly, moving about almost like a "slave" (30), imports the entire range of fatigue, stupidity, boredom, and weakness into the serious philosophical enterprise. As literature gets bored with philosophy, philosophy is at a loss: "[Fuks] was tiresome – and he knew it, no illusions – he emanated the fatalism of a man who is bound to be a bore, he stood by the wall, all this was hollow in the extreme, futile. He insisted: 'Try to remember...' but I knew that he insisted out of boredom, and this bored me as well" (50-1). But Fuks can only mumble, "The minute I saw her...the problem with her mouth seemed...but...it could be either way...this way or that...What do you think?" (35), "It's...perhaps...what do you think?" (52).

At night, abandoned by Fuks in the garden, after having snooped through Katasia's room to find an endless deluge of nails and pins stuck into objects, the noise of heavy hammering suddenly appearing and disappearing, and affected by a general numbness, Witold climbs into a tree to spy on Lena in her room, expecting to see her naked. Instead, he witnesses Ludwik showing Lena a kettle, upon which he concludes: "There is something like an excess of reality, its swelling beyond endurance."²⁴ Philosophy would respond to this "excess of reality" by regulating or systematizing it in one way or another, constraining the excess. Witold, however, cannot take it any longer.

After so many objects that I couldn't even enumerate, after the needles, frogs, sparrow, stick, whiffletree, pen nib, leather, cardboard, et cetera, chimney, cork, scratch, drainpipe, hand, pellets, etc. etc., clods of dirt, wire mesh, wire, bed, pebbles, toothpick, chicken, warts, bays, islands, needle, and so on and so on and on, to the point of tedium, to excess, and now this kettle popping up like a Jack-in-the-box, without rhyme or reason, on its own, gratis, a luxury of disorder, a splendor of chaos. Enough is enough. My throat tightened. I won't be able to swallow all this. I won't be able to handle it. Enough. Turn back. Go home. (68-9)

Witold is about to give in, to halt his pursuit, to leave his investigation behind. But abandoned by Fuks, he strangles Lena's cat: alone, he carries on. The strangling of the cat may be read as an allegory of artistic production, the decisive moment to exit the mode of obsessive thought, to confront the "excess of reality" head on, and perform something that is ahead of thought: "what am I doing – flashed through me like lightning, but then I thought: too bad, it's too late" (70). Witold then hangs the cat on a hook, "like the sparrow, like the stick, completing the picture" (71). Abandoned by Fuks's analytical impulse, Witold somehow completes the picture. Whereas Fuks's aims are etiological, driven by a quest for causality, Witold's aim seems to be different. Though his hanging of the cat follows a series of moves, some of which are sanctioned by philosophy's investigation – crawling around in the bushes, snooping in Katasia's chamber – and illegal actions – climbing up the tree and the final strangling of the cat –, the reasons for his gesture are for Witold himself inaccessible: "But still, why did I hang it? So many issues piling up, so

²⁴ This idea is also mentioned in the Diary, where Gombrowicz lists: "What adventures, and what rows with reality during this tearing out of the fog! Internal and external logic. The stratagems of logic. Intellectual wilderness: analogues, oppositions, symmetries. Suddenly the growing dithyrambic rhythm of the furiously forming Reality. And its disintegration. Catastrophe. Shame. The sudden overflowing with excessive fact" (675).

many threads interweaving, Lena, Katasia, signs, pounding, et cetera, take even the frog, or the ashtray, et cetera. [...] What was the link then, what did the cat even have to do with it? I had no time to think [...]" (74).

We may perhaps hazard to read these scenes of incomprehension with the help of Giorgio Agamben's essay "Notes on Gesture." According to Agamben, "What characterizes gesture is that in it nothing is being produced or acted, but rather something is being endured and supported. The gesture [...] opens the sphere of ethos as the more proper sphere of that which is human."²⁵ A gesture is thus not a means to an end, but "the process of making a means visible as such."²⁶ It is precisely this hanging of the cat as unmotivated action, a gesture aiming for an unexplained completion, that allows art to arrive at something like the ethical or the political. Unlike Fuks, the artist produces no systematization of concepts, and neither does it accomplish any conclusive action. Witold doesn't even consider himself the strangler (73), that is, a conscious actor. Thus in this crucial scene where he is confronted with a "excess of reality," Witold doesn't respond by making an image, by producing an esthetic, but by performing a gesture which is always of political consequence.²⁷ The consequences of this gesture in the novel are no less than revolutionary. The strangling of Lena's cat brings father Leon to initiate a displacement of nearly the entire household from the boarding house to the mountains, new characters are welcomed and even a priest joins the party. Still, it remains uncertain whether Cosmos itself allows for this philosophical gesture that imports a text from elsewhere.

The subversion of form that is constantly at work in Gombrowicz's *Cosmos* finds its expression, on the level of language, in part in the incessant punning that is established between the two anomalies. As Berressem and others have noticed, "puns and acoustic similarities – for instance between 'kulka' (little ball), 'kurka' (chicken), and 'kurwa' (whore) [...] – always denote communicative bridges between the two series."²⁸ Leon, the head of the Wojtys household and the one excelling in such "word-monsters" (22), catches up steam after the displacement of the narrative to the mountains. He starts an avalanche of derivations of the "masturbatory" nonsense word berg: "berg" (125), "berging," "bemberg," "bembergality" (134), "candybergs and penalbergs" (137), and so on. In an exchange with Ludwik, an architect by profession, Leon emerges as a figure of disorder, forcefully rejecting Ludwik's plea for a "rational organization of society and the world" (44):

Organize! You're dreaming, cooking it up, you think you'll catch it all in your grip just like that dum dee dum, eh? [...] Scientifi-fic, [...] confide, if you please, confide to my snow-white virgin bosom how you are going to, with this scientific background of yours, or-ga-nize, how on earth, I ask you, how will you with this that there, in what manner. (44-5)

Ludwik and Leon thus seem to be figured as the two poles of rationality and irrationality, construction and deconstruction between which Fuks and Witold find themselves wedged. At the same time Leon's onanistic punning cannot be separated from Witold's own actions: "At times I (Witold) have the impression that I'm collaborating with him, as in a difficult childbirth – as if we were giving birth to something" (146), and later: "I expected everything to

²⁵ Giorgio Agamben, "Notes on Gesture," in *Means Without Ends: Notes on Politics*, trans. Vincenzo Binetti and Cesare Casarino (Minneapolis and London: University of Minnesota Press, 2000), 57.

²⁶ Ibid., 58.

²⁷ Ibid., 60.

²⁸ Berressem, *Lines of Desire*, 208.

move forward in the mode of berg. I was an officer of the Commander-in-Chief. A boy serving at mass" (170-1). Somehow, Witold's figure, the figure of the artist, is complicit in the subversive etymological schemes set up by Leon; only once he has fully assimilated Leon's speech, responding like him, something like a consistency seems to emerge toward the end of the novel. Paradoxically, however, Witold only arrives at a certain sense of closure, a certain solution, a certain logic, after discovering the corpse of Ludwik, as a figure of system and organization.

This brings us to the final hanging that takes place, namely the hanging of Ludwik in a copse close to the country house. In a reversal of the novel's opening scene, Witold is first confronted by a repetition of the anomaly of the association of Katasia's and Lena's lips, namely when he encounters two family guests vomiting on the porch after a vodka-infused dinner: "Her mouth, as I saw it, had reason to vomit – which is why I looked – since the priest was vomiting, why shouldn't she be vomiting?" (174). This scene is followed by something of an amplification of the first scene of the novel, when he and Fuks found the first anomaly of the sparrow hanging in the bushes, the hanging corpse of Ludwik: "The copse began with a few scattered birches, and right after that there was a concentration of pines, thicker, darker. [...] There was a man...hanged...I looked, a man...legs, shoes, higher up I could make out a head, askew, the rest merged into the tree, into the dark branches" (175). Contrary to the original confrontation with the hanged sparrow, which set off the maelstrom of associations culminating in the gesture of hanging Lena's cat, Witold is here confronted with a hanging that "fits": "And pam, pam, pam, pam! One, two, three, four! The hanged sparrow, the hanging stick, the strangled-hanged cat, Ludwik hanged. How neatly it fit together! What consistency! A stupid corpse was becoming a logical corpse" (176). Even though on the level of narrative no explication is offered for Ludwik's suicide, Witold calls Ludwik's corpse a "logical corpse," supporting what Witold later calls a "subterranean logic" which "would dissolve and evanesce [...] if one were to submit it to the discipline of ordinary logic" (178).

This brings us back to our initial observations. Philosophy, always operating to a certain extent "state-like," shares with politics the ability to incorporate, to swallow (digestion remains a problem) any action or object proposed from the realm of art, organizing it in its logic, even in the face of what Witold called the "excess of reality." The illegality of artistic gestures is therefore always relative, and never absolute; its illegality is never measured solely in relation to itself and is therefore essentially inaccessible for it. And even though they open up to the political, art can never think them as political. Art does not care for philosophy's attempts at systematization, nor for the attempts of politics to legislate its gestures, it moves on – tired, bored, overcome by fatigue, but with a "subterranean logic" – and strangles the cat. In *Cosmos* Gombrowicz offers a serial form of two delightful anomalies to Deleuze and chuckles when the latter has to call upon other novelists to steer his philosophical appropriation away from the darkness and "cruelty" with which this form originates.²⁹ This cruelty is one of philosophy's names for the work of art, whose task is perhaps to discover those new modes of negation – of ill-legality. As Gombrowicz stated: "To contradict, even on little matters, is the supreme necessity of art today,"³⁰ that is, to affirm the illegal gesture in the face of philosophy's flight from immaturity.

29 For example, when Deleuze opens his essay "Literature and Life," *Essays: Critical and Clinical*, trans. Daniel W. Smith and Michael A. Greco (Minneapolis: University of Minneapolis Press, 1997), with the words "To write is certainly not to impose a form (of expression) on the matter of lived experience. Literature rather moves in the direction of the ill-formed and the incomplete, as Gombrowicz said as well as practiced" (1), abandoning Gombrowicz for the remainder of the essay.

30 Quoted in Susan Sontag, *Foreword to Witold Gombrowicz*, Ferdynand, trans. Danuta Borchardt (New Haven: Yale University Press, 2000), x.



Predmet 001079

(Konkordantno studijsko pomagalo)

Agency

S engleskoga prevela Marina Miladinov

Godine 1911. čikaški je liječnik po imenu William S. Sadler liječio pacijenta s neuobičajenim režimom spavanja. Pacijent je navodno govorio u snu neobičnim glasom koji je tvrdio da je "posjetitelj s drugog planeta".⁰¹ Kada je pregledao pacijenta ne bi li ustanovio neke psihijatrijske probleme, Sadler je izjavio kako nije u mogućnosti postaviti dijagnozu. Zatim je izučavao tog čovjeka osamnaest godina. Tijekom tog razdoblja njegov je pacijent u snu izdiktirao veći broj poruka. Uz pomoć stenografa Sadler je tijekom 209 seansi transkribirao iskaze medija. Činilo se da objave potječu od nebeskih bića koja su posjetila naš planet, koji su nazivala Urancijom. Ta nebeska bića nazivala su sebe "Božanskim savjetnikom", "Predvodnikom korpusa nadsvemirskih osoba" i "Predvodnikom arhanđela Nebadona".

Godine 1925. Sadler je također pronašao rukom pisane dokumente u pacijentovu domu, koji su nosili naslov "Kontaktna osoba". Te dokumente sabrala je malena skupina (William S. Sadler, Lena Sadler, William S. Sadler Jr., Anna Kellogg i Wilfred Kellogg) nazvana Kontaktnim povjerenstvom i veća skupina ljudi koji su čitali i izučavali prve verzije teksta po imenu "Forum",

sastavivši od njih takozvane "Zapise o Uranciji".⁰² Godine 1934. Kontaktno povjerenstvo je uredilo više verzija "Zapisa o Uranciji" i sabralo ih u knjigu, koja je dovršena 1935. pod naslovom "Knjiga o Uranciji". Godine 1939. skupina dobrovoljaca počela je izučavati "Knjigu o Uranciji".⁰³ Knjiga je privukla velik broj novih čitatelja te je 1950. godine Kontaktno povjerenstvo oformilo Zakladu Urancije, dobrotvorni fond s ciljem očuvanja i popularizacije "Knjige o Uranciji". Godine 1955. Zaklada Urancije objavila je "Knjigu o Uranciji". Iste godine Zaklada Urancije registrirala je autorstvo pri Autorskoj agenciji. Na potvrdi je pisalo da je Zaklada "vlasnik prava nad autorskim djelom".

Od ljeta 1989. do ljeta 1990. Štovatelji Sina, skupina za izučavanje "Knjige o Uranciji", sastavljali su studijsko pomagalo u Tucsonu (Arizona). Odlučili su skenirati tekst, prenijeti ga u Word format i izraditi kazalo. Godine 1990. Kristen Maaherra, članica Štovatelja Sina, prvi put je predstavila "Konkordantno studijsko pomagalo" na konferenciji o Uranciji u Snowmassu (Colorado). Podijelila je Runtime Folio Views dokument s "Konkordantnim studijskim pomagalom" na diskovima i u tiskanom obliku. Dokument je cirkulirao među brojnim čitateljima.⁰⁴

⁰¹ William Sadler, *The Mind at Mischief: Tricks and Deceptions of the Subconscious and How to Cope with Them* (1929.).

⁰² David Kantor, *The First Century of the Fifth Epochal Revelation* (2003.).

⁰³ David Kantor, nav. djelo.

⁰⁴ Kristen Maaherra, *Kristen's Letter to the Judge* (1999.), <http://www.freeurantia.org>

Dana 27. veljače 1991. Zaklada Urancije uložila je pritužbu protiv Kristen Maaherra, tvrdeći kako je bespravno kopirala tekst "Knjige o Uranciji" i raspačavala ga diljem SAD-a. Kristen Maaherra tvrdila je kako su "Zapisi o Uranciji" Peta epohalna objava i kako sloboda vjere jamči sljedbenicima pravo da izučavaju "Zapise o Uranciji". Dana 10. veljače 1995., tijekom procesa *Zaklada Urancija protiv Kristen Maaherra* na američkom Okružnom sudu Arizone, sudac Urbom je izjavio:

[...] Priznanje [Kristen Maaherra] da je kopirala tekst "Knjige o Uranciji" dopušta mi da se usredotočim isključivo na valjanost autorskog prava [Zaklade Urancije]. [...]

1. Pravila o autorskim djelima.

Tumačim ulogu Kontaktne osobe kao veću od uloge pukog zapisničara, koji nije sposoban biti autor onoga što mehanički transkribira. [...] Ključno je pitanje postoji li dovoljno dokaza za zaključak da je postojao zaposlenički odnos između pacijenta dr. Sadlera i samog dr. Sadlera ili Kontaktnog povjerenstva. Osobno smatram da nije postojao. Naposljetku, pacijent je taj od kojega su "Zapisi o Uranciji" potekli. [...]

Trenutno stanje slučaja upućuje na nepostojanje zaposleničkog odnosa. Izvorno je pacijent bio taj koji je potražio dr. Sadlera, i to ne kao poslodavca, nego kao liječnika. Prvi "Zapisi o Uranciji" nisu nastali na poticaj dr. Sadlera i zamisao o njihovu stvaranju nije potekla niti od dr. Sadlera niti od Kontaktnog povjerenstva. [...] Štoviše, ne postoje nikakvi dokazi za to da su dr. Sadler ili Kontaktno povjerenstvo imali moć da navedu, usmjere, nadgledaju, nadziru ili kontroliraju fizičku proizvodnju bilo kojega od "Zapisa o Uranciji". [...]

2. Kompilacijska djela. [...] Slažem se s time da bi se "Knjiga o Uranciji" mogla smatrati kompilacijskim djelom [...]. [Zaklada Urancije] nastoji dokazati kako struktura "Knjige o Uranciji" zadovoljava definiciju kompilacijskog djela, ali nije u mogućnosti ponuditi dokaze za to da su pojedinačni "Zapisi o Uranciji" bili prenošeni kao rezultat poštivanja nekog ugovornog sporazuma koji bi [Zakladi Urancije] dao pravo da postane njihovim vlasnikom. [...]"⁰⁵

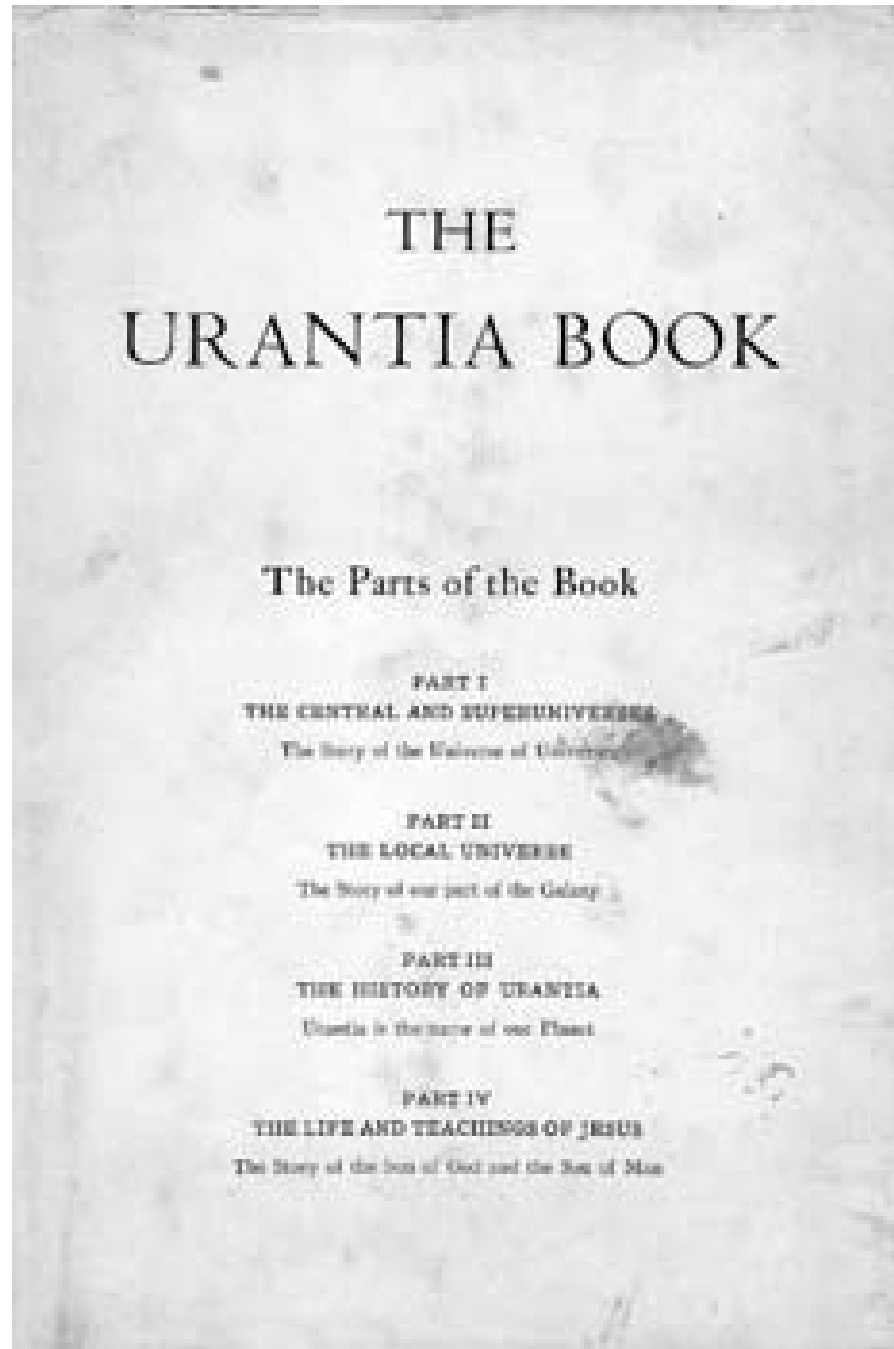
Sud je zaključio da je autorsko pravo nad "Knjigom o Uranciji" nevažeće, budući da knjiga nije autorsko djelo, kao što se tvrdi na potvrdi, i također je ustanovio da, iako bi se knjiga mogla smatrati kompilacijskim djelom, Zaklada Urancije nije uspjela dokazati da je došlo do prijenosa prava. Zaklada Urancije uložila je priziv na odluku suda. Dana 1. lipnja 1997., tijekom sudskog procesa *Zaklada Urancije protiv Kristen Maaherra* na američkom Prizivnom sudu, sudac Schroeder izjavio je sljedeće:

Mogućnost polaganja autorskih prava na "Knjigu". Ovdje se radi o rubnom slučaju, budući da se tvrdi kako knjiga utjelovljuje riječi nebeskih bića, a ne ljudskih, te je pitanje može li se uopće na nju polagati autorsko pravo. [...] Zakon o autorskom pravu, dakako, ne nalaže izričito "ljudsko" autorstvo, i posljednjih godina svjedoci smo većeg broja sporova oko toga može li se polagati autorsko pravo na kompjuterski generirana djela. [...] Ipak, slažemo se s Kristin Maaherra u tome da Zakon o autorskom pravu nije tu kako bi štitio tvorevine nebeskih bića i kako je u ovom slučaju morao biti prisutan i nekakav element ljudske kreativnosti kako bi se na "Knjigu" moglo polagati autorsko pravo. [...] Pitanje o mogućnosti zaštite autorskog prava nije metafizičko i ne zahtijeva od sudova da utvrđuju ima li "Knjiga" nebesko podrijetlo ili ne. U ovom slučaju, uvjerenje koje obje strane očito imaju o tom podrijetlu, kao i njihova tvrdnja da je "Knjiga" proizvod božanske objave, stvar je vjere i očito ključni element u promicanju i distribuciji knjige. Međutim, što se tiče zaštite autorskih prava, takvo se pravo može polagati na neko djelo ako ga zaštite prva ljudska bića koja su sabrala, izabrala, koordinirala i uredila nauk Urancije "na takav način da djelo koje je iz toga proizašlo u cijelosti čini izvorno autorsko djelo" [definicija autorskog prava nad kompilacijom]. [...] Oni koji su odgovorni za stvaranje opipljivog književnog oblika koji se može čitati mogli su zaštititi autorsko pravo u svoje ime u ulozi "autora", budući da su odgovorni za to što su objave formulirane 'na takav

način' da su djelo kao cjelinu učinile izvornim. [...] U ovom slučaju Kontaktno povjerenstvo moglo je primiti neke upute od nebeskih bića kao odgovore na pitanja koje je postavljalo, ali su članovi Kontaktnog povjerenstva odabrali i formulirali konkretna postavljena pitanja. Ta pitanja materijalno su pridonijela strukturi "Zapisa", poretku objava u svakom pojedinom "Zapisu" te organizaciji i načinu na koji "Zapisi" slijede jedni druge. Smatramo da ljudski odabir i poredak objava u ovom slučaju nije mogao biti toliko mehanički ili rutinski da uopće nije zahtijevao nikakvu kreativnost. [...] Vlasništvo nad autorskim pravom u vrijeme izvorne publikacije. [...] Okružni sud ispravno je primijetio da je izbor pacijenta dr. Sadlera kao medija koji će prenijeti učenja koja će naposljetku biti zabilježena na pločama doista bio sretna slučajnost. Međutim, smatramo da je odlučujuće pitanje je li u vrijeme objavljivanja Zaklada, koja polaže autorsko pravo, mogla svoje ovlasti zahvaliti ljudima koji su izvorno posjedovali autorsko pravo u skladu s običajnim pravom. [...] "Zapisi" su [...] bili zaštićeni običajnim autorskim pravom od trenutka kada su ih stvorili članovi Kontaktnog povjerenstva do objavljivanja "Knjige". Pitanje je, međutim, jesu li ti ljudi prenijeli autorsko pravo na Zakladu. [...] Samo posjedovanje ploča za otisak, koje se nalaze kod Zaklade, moglo je biti dovoljno za uspostavu prijenosa [...] Budući da je namjera da se vlasništvo nad pločama prenese na Zakladu bila jasna, i ploče su dostavljene Zakladi, smatramo da su članovi Kontaktnog povjerenstva također namjeravali prenijeti, i doista su prenijeli, svoje autorsko pravo nad "Zapisima" Zakladi. [...] Valjanost obnove prava. [...] U potvrdi stoji da je Zaklada zahtijevala obnovu prava kao "vlasnik prava nad autorskim djelom". Maaherra pak tvrdi da "Knjiga" nije bila

"autorsko djelo" i da je obnova prava stoga nevažeca. [...] Što se tiče pitanja je li "Knjiga" bila "autorsko djelo", Maaherra je vjerojatno u pravu kada tvrdi da nije. Zaklada nikada nije bila poslodavac nijednog nebeskog bića, dr. Sadlera, Kontaktnog povjerenstva ili bilo kojeg drugog entiteta koji je igrao ulogu u stvaranju "Zapisa" koji su naposljetku preneseni na Zakladu. [...] Maaherra [...] tvrdi da, budući da potvrda o obnovi prava definira Zakladu kao "vlasnika autorskog djela", a ne "vlasnika kompilacijskog djela", urudžbiranje obnove prava nije važeće. [...] Nismo pronašli nijedan slučaj koji je ikada proglasio obnovu prava nevažecom zbog pomanjkanja adekvatne definicije na kojoj se zasniva zamolba. Jedini slučajevi u kojima su obnove prava opozvane bili su slučajevi gdje bi zamolbu ispunila pogrešna osoba, a ne netko tko ne odgovara pravoj vrsti vlasništva. [...] Maaherra tvrdi da je autorsko pravo Zaklade ipak nevažeca čak i u odnosu na te slučajeve, budući da je Zaklada namjeravala obmanuti Autorsku agenciju tvrdeći kako je "vlasnik autorskog djela". [...] Maaherra dalje tvrdi da Zaklada nije željela otkriti Autorskoj agenciji kako su "autori" nebeska bića bojeći se da bi Autorska agencija odbacila njezin zahtjev. [...] Ta tvrdnja nema osnove. Zaklada je pohranila dva primjerka "Knjige" pri Autorskoj agenciji. "Knjiga" jasno definira vlastito podrijetlo kao djelo koje je nastalo na poticaj "planetarnih nebeskih mentora [koji su potaknuli] molbe koji su rezultirale davanjem naloga koji su omogućili niz objava, dio kojih je i ovaj prikaz." Zaključujemo kako Zaklada nije pokušala nikakvu obmanu [...].^{o6}

Sud je zaključio da je autorsko pravo Zaklade Urancije važeće i da ga je Maaherra povrijedila. Ranija odluka Okružnog suda time je opovrgnuta.



April 1, 1964, 5:00 p.m.

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the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion. The number of illiterate people in the world is projected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is projected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is projected to reach 1.7 billion by the year 2015.

1. The first step is to identify the problem. In this case, the problem is that the system is not working as expected.

[illegible][illegible][illegible]

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971). The concentration of chlorophylls was expressed as $\mu\text{g mL}^{-1}$ of the sample.

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the 1990s, the number of people in the United States who are aged 65 and older has increased by 25% (U.S. Census Bureau, 2000). The number of people aged 65 and older is projected to increase by 50% by the year 2020 (U.S. Census Bureau, 2000). The number of people aged 65 and older is projected to increase by 50% by the year 2020 (U.S. Census Bureau, 2000). The number of people aged 65 and older is projected to increase by 50% by the year 2020 (U.S. Census Bureau, 2000).

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The first of these is the *Journal of the American Medical Association* (JAMA), which has been the most influential of the medical journals in the United States since its founding in 1883. It is a weekly publication, and its content is primarily focused on the latest research and clinical practice in the field of medicine. The journal is published by the American Medical Association, which is a professional organization of physicians in the United States. The journal is known for its high standards of quality and its commitment to providing its readers with the most up-to-date and accurate information available in the field of medicine.

the 1990s, the number of people in the United States who are 65 years of age or older has increased by 50% (U.S. Census Bureau, 2000). The number of people aged 65 and older is projected to increase to 20% of the total population by the year 2020 (U.S. Census Bureau, 2000). The increase in the number of older people in the United States has led to a corresponding increase in the number of people who are dependent on others for their care. The number of people aged 65 and older who are dependent on others for their care is projected to increase from 10 million in 1990 to 20 million in 2020 (U.S. Census Bureau, 2000). The increase in the number of people who are dependent on others for their care has led to a corresponding increase in the number of people who are dependent on others for their care. The number of people aged 65 and older who are dependent on others for their care is projected to increase from 10 million in 1990 to 20 million in 2020 (U.S. Census Bureau, 2000).

the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion. The number of illiterate people in the world is expected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is expected to reach 1.7 billion by the year 2015. The number of illiterate people in the world is expected to reach 1.7 billion by the year 2015.

[illegible]

He soon concluded that the Liberty Foundation's purposes were valid and that "Morton was a man of the purest motives, religious and otherwise."

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Lichtenthaler and Whistler (1973). The total chlorophyll content was determined by the method of Arar and Cook (1980). The carotenoid content was determined by the method of Lichtenthaler and Whistler (1973). The total carotenoid content was determined by the method of Arar and Cook (1980). The total protein content was determined by the method of Lowry et al. (1951). The total lipid content was determined by the method of Bligh and Dyer (1959). The total carbohydrate content was determined by the method of Dubois and Gilles (1950). The total nucleic acid content was determined by the method of Burton (1956). The total ash content was determined by the method of AOAC (1990). The total moisture content was determined by the method of AOAC (1990). The total dry matter content was determined by the method of AOAC (1990). The total organic acid content was determined by the method of AOAC (1990). The total alkaloid content was determined by the method of AOAC (1990). The total saponin content was determined by the method of AOAC (1990). The total tannin content was determined by the method of AOAC (1990). The total flavonoid content was determined by the method of AOAC (1990). The total phenolic content was determined by the method of AOAC (1990). The total terpenoid content was determined by the method of AOAC (1990). The total steroid content was determined by the method of AOAC (1990). The total glycoside content was determined by the method of AOAC (1990). The total alkaloid content was determined by the method of AOAC (1990). The total saponin content was determined by the method of AOAC (1990). The total tannin content was determined by the method of AOAC (1990). The total flavonoid content was determined by the method of AOAC (1990). The total phenolic content was determined by the method of AOAC (1990). The total terpenoid content was determined by the method of AOAC (1990). The total steroid content was determined by the method of AOAC (1990). The total glycoside content was determined by the method of AOAC (1990).



Bilješke o suradnicima / Notes on Contributors

Agency je inicijativa iz Bruxellesa koju je 1992. osnovao Kobe Matthys. Agency konstituira rastuću 'listu stvari' koja se opire klasifikacijama između prirode i kulture. Agency prezentira stvari s liste u različitim 'montažama' unutar izložbi, izvedbi, publikacija, itd... Svaka montaža spekulira o drukčijem pitanju. Ta pitanja na topološki način istražuju operativne posljedice koje aparat intelektualnog vlasništva ima za ekologiju umjetničkih praksi.

Agency is a Brussels-based initiative that was founded in 1992 by Kobe Matthys. Agency constitutes a growing 'list of things' that resist the split between the classifications of nature and culture. Agency calls things forth from its list via a varying 'assemblies' inside exhibitions, performances, publications, etc... Each assembly speculates on a different question. Those questions explore in a topological way the operative consequences of the apparatus of intellectual property for an ecology of art practices.

Patrick Bernier & Olive Martin su se upoznali u Parizu krajem devedesetih na Ecole des beaux arts i radili su zajedno duže od desetljeća razvijajući raznovrstan spektar radova kombinirajući pisanje, instalaciju, izvedbu, fotografiju i film. Među izabranim radovima su: filmovi *Manmuswak* (2005) i *La Nouvelle Kahnawake* (2010), *Project for a legal precedent* (2007), *Checkered Chess* (2012).

Patrick Bernier & Olive Martin, first met at the Ecole des beaux arts de Paris in the end of the 90's and have worked collaboratively for over a decade to develop a varied body of work combining writing, installation, performance, photography and film. Selected works include: films *Manmuswak* (2005) and *La Nouvelle Kahnawake* (2010), *Project for a legal precedent* (2007), *Checkered Chess* (2012).

Jakob Braeuer je partner berlinske umjetničko-pravne kompanije Bauschke Braeuer. Među njihovim klijentima su brojni međunarodno poznati umjetnici, galerije i umjetničke institucije. Studirao je u Berlinu, Salamanci i Londonu, a magistrirao je na pravu intelektualnog vlasništva na London School of Economics and Political Science.

Jakob Braeuer is partner of the Berlin based art law firm Bauschke Braeuer. Among the firm's clients are numerous internationally known artists, galleries and art institutions. He studied in Berlin, Salamanca and London and holds an LL.M. in Intellectual Property Law from the

London School of Economics and Political Science.

Vincent W.J. van Geuzen Oei je studirao klasičnu kompoziciju, lingvistiku, konceptualnu umjetnost i filozofiju na kojoj je doktorirao na European Graduate School. Trenutno radi na drugom doktoratu na Centre for Modern Thought na University of Aberdeen. Predaje filozofiju na University of New York u Tirani i teoriju umjetnosti na Kraljevskoj akademiji umjetnosti u Haagu. Živi i radi u Tirani.

Vincent W.J. van Geuzen Oei studied classical composition, linguistics, conceptual art, and philosophy and holds a PhD in philosophy from the European Graduate School. He currently pursues a second doctorate at the Centre for Modern Thought at the University of Aberdeen. He teaches philosophy at the University of New York in Tirana, and art theory at the Royal Academy of the Arts, The Hague. He works and lives in Tirana, Albania.

Judith Ickowicz je doktorirala pravo i istraživačica i stručnjakinja je za pravo intelektualnog vlasništva. Predaje na sveučilištu i raznim umjetničkim akademijama. Kroz multidisciplinarni pristup koristeći razna područja humanistike istražuje interakcije između prava i umjetničkog stvaranja, s posebnim interesom za ekonomiju umjetnosti, status slike i odnos između umjetnosti i tehnologije, kao i za status tijela i pitanja identiteta. Napisala je nekoliko teorijskih tekstova o vezama između prava i suvremene umjetnosti i napisala je *Law After the Dematerialization of the Work of Art* (Les presses du réel, Dijon, France, 2013).

Doctor of Law, Judith Ickowicz is a researcher and specialist in intellectual property law. She teaches at a university and at various art schools. Taking a multidisciplinary approach drawing from other fields within the humanities, she studies the interactions between the law and artistic creation, with particular interest in the economics of art, in the status of the image, and relationships between art and technology, the status of the body and questions of identity. She has written several theoretical texts on the links between law and contemporary art, and is the author of *Law After the Dematerialization of the Work of Art* (Les presses du réel, Dijon, France, 2013).

Omer Krieger je umjetnik i kustos koji radi s javnim iskustvima, institucijama i prostozima, i zainteresiran je za

odnos umjetnosti i umjetnika s političkom moći i posebno s državom. Krieger proizvodi uloge, organizira akcije, konstruira situacije, koreografira ponašanje, izvodi prisutnost i potiče masovno medijske događaje u javnom prostoru. Od 2006. do 2011. bio je jedan od osnivača i vođa izvedbeno istraživačkog tijela Public Movement (s Danom Yahalomi). Zadnje dvije godine je bio umjetnički direktor programa Under the Mountain: Festival of New Public Art, na Jerusalem Season of Culture. jerusalemseason.com/en/content/event/under-mountain

Omer Krieger is an artist and curator who works with public experience, institutions and spaces, and interested in art and artists' relationship with political power and particularly with the State. Krieger produces roles, organizes actions, constructs situations, choreographs behaviour, performs presence and instigates mass media events in public space. Cofounder and leader (2006-2011) of the performative research body Public Movement (with Dana Yahalomi), He has served for the last two years as Artistic Director of Under the Mountain: Festival of New Public Art, Jerusalem Season of Culture. jerusalemseason.com/en/content/event/under-mountain

Aldo Milohnić has a PhD in sociology of culture. He is a researcher at the Peace Institute Ljubljana - Institute for Contemporary Social and Political Studies and an assistant professor at the University of Ljubljana. He is editor of the *Politike* book series, editor of numerous anthologies of texts and special issues of cultural journals, co-author of several books (*Culture Ltd.*, *It's Time for Brecht*, among others), author of numerous articles in academic journals and author of the book *Theories of Contemporary Theatre and Performance*.

Aldo Milohnić je doktor sociologije kulture, istraživač na Institutu za suvremene društvene i političke studije (Mirovni institut) i docent na Univerzitetu u Ljubljani. Urednik je znanstvene zbirke *Politike*, urednik brojnih zbornika i tematskih brojeva kulturnih časopisa, suautor nekoliko knjiga (npr. *Kultura d.o.o.*, *Vrijeme je za Brecht*), autor brojnih članaka u znanstvenim i stručnim časopisima te autor knjige *Teorije suvremenog teatra i performansa*.

Juli Reinartz je koreografkinja i izvođačica koja radi u Švedskoj. Do 2012. je studirala na koreografiju na DOCH-u i surađivala s Angela Schubot, Jared Gradinger, Trajall Harrel, Jan Ritsema, Verena Billinger/ Sebastian Schulz, Ingri Fiksdal i

umjetničkim kolektivom kom.post. U 2013. će završiti jednogodišnju rezidenciju na Kraljevskom umjetničkom institutu u Stockholmu gdje je istraživala relacionalne kapacitete glazbe. Njen projekt *Really Good Music* će imati premijeru na MDT u prosincu 2013.

Juli Reinartz is a choreographer and performer in Sweden. Until 2012, she studied in the Master of Choreography at DOCH and collaborated with Angela Schubot, Jared Gradinger, Trajall Harrel, Jan Ritsema, Verena Billinger/Sebastian Schulz, Ingri Fiksdal and the artist collective kom.post. In 2013, she will finalize a one year residency at the Royal Institute of Art in Stockholm investigating relational capacities of music. Her project *Really Good Music* will premiere at MDT in December 2013.

Vizualni umjetnik Jonas Staal (1981) trenutno radi na svom doktorskom istraživanju naslova *Art and Propaganda in the 21st Century: A Dutch Perspective* na Sveučilištu u Leidenu u Nizozemskoj i jedan je od osnivača umjetničke i političke organizacije New World Summit. Njegov rad uključuje intervencije u javnom prostoru, izložbe, predavanja i publikacije, fokusirajući se pritom na odnos između umjetnosti, politike i ideologije.

Visual artist Jonas Staal (1981) currently works on his PhD research entitled *Art and Propaganda in the 21st Century: A Dutch Perspective* at the University of Leiden (NL) and is the founder of the artistic and political organization New World Summit. His work includes interventions in public space, exhibitions, lectures and publications, focusing on the relationship between art, politics and ideology.

Tea Tupajić je hrvatska kazališna redateljica. Kao nezavisna umjetnica radi na kazališnim i galerijskim projektima. U periodu 2010-2012. u suradnjim s Petrom Zanki je kreirala *The Curators' Piece* i nekoliko izvedbi i konferencija u sklopu *The agora project* kojeg je inicirao Jan Ritsema. Njeni projekti su prezentirani na mjestima i festivalima kao što su BIT Teatergarasjen (Bergen), Bastard (Trondheim), TUPP festival (Uppsala), Tanzquartier Wien (Beč), Kaaaitheater (Brussels), steirischer herbst (Graz), PACT Zollverein (Essen)... U magazinu *Frakcija* surađuje kao gostujuća urednica i autorica. Pisala je i za brojne druge magazine. Predaje i prezentira na međunarodnim konferencijama.

Tea Tupajić is a Croatian theatre director. As an independent artist she works on theater and gallery projects. In the period 2010-2012 creates *The Curators' Piece* in collaboration with Petra Zanki and several performances and conferences as a part of *The agora project* initiated by Jan Ritsema. Her projects are presented in venues/festivals such as BIT Teatergarasjen (Bergen), Bastard (Trondheim), TUPP festival (Uppsala), Tanzquartier Wien (Vienna), Kaaaitheater (Brussels), steirischer herbst (Graz), PACT Zollverein (Essen)... Guest editor and write for the magazine *Frakcija*. Published in various magazines. Lectures and contributes to conferences internationally.

Joanna Warsza je kustosica vizualnih i izvedbenih umjetnosti i arhitekture. Bila je suradnica kustosica Sedmog Berlinskog Bienala. Diplomirala je na odsjeku za teatrologiju varšavske Kazališne akademije i na odsjeku za ples Sveučilišta Paris 8. Osnivačica je nezavisne platforme Laura Palmer Foundation. Warsza uglavnom radi u oblasti javnog prostora, kurira projekte koji ispituju društvene i političke agende. Jedna je od kustosica predstojećeg Gothenburg Bienala i kustosica Gruzijskog paviljona na ovogodišnjem Venecijanskom Bienalu. Uredila je *Stadium X- A Place That Never Was* (2009) i *Forget Fear* (2012).

Joanna Warsza is a curator for visual and performing arts and architecture. She was an associate curator of the 7th Berlin Biennale. She graduated from Warsaw Theater Academy, Theater Studies department and the University of Paris 8, Dance department. She is the founder of the independent platform Laura Palmer Foundation. Warsza has worked mostly in the public realm, curating projects that examine social and political agendas. She is one of the curators of upcoming Gothenburg Biennale and curator of the Georgian Pavilion at the Venice Biennale 2013. She is an editor of *Stadium X- A Place That Never Was* (2009) and *Forget Fear* (2012).

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